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MISSISSIPPI CODE 1972
Annotated

Volume 2

Mississippi Court Rules
Local Rules of Federal Courts

COURT RULES

MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

COURT RULES

2020 Edition

Volume 2

Prepared by the Editorial Staff of the Publisher

LexisNexis®

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ISBN 978-1-5221-8708-0

LexisNexis

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555 Middle Creek Parkway Colorado Springs, CO 80921

www.lexisnexis.com

(Pub. 44510)

PREFACE

Use of 2020 Edition; format.

The 2020 Edition of the Mississippi Court Rules Annotated two-volume set is a publication of LexisNexis. It has been edited, annotated and indexed by the staff of the publishers. It is published in soft cover and is replaced annually. All changes and additions to the Rules, the official Comments and Notes, and the Forms are reflected in each year's edition and the annotations are reviewed and updated, providing the user with the most current and useful information.

Volume 1 of the two-volume set includes the Rules of Civil Procedure, Rules of Criminal Procedure and Rules of Evidence. Volume 2 includes the remaining State and local court rules and the rules of the federal courts in and for the State of Mississippi. The Table of Contents in this edition contains a complete listing of all of the Rules. In addition, each set of Rules contains its own table of contents and index.

The Court Rules are intended to accompany the Mississippi Code of 1972 Annotated. The format and style of the Code has been adhered to as closely as possible for purposes of consistency and for the convenience of the users of the Rules.

Scope of rules and annotations.

Rules Volumes 1 and 2 include all changes and additions to the Rules, the official Comments and Notes, and the Forms that have taken place since their initial issuance up to and including amendments received by the publisher through September 10, 2020. In addition, notes construing the Rules have been taken from the reports of decisions of the local and federal courts in cases arising in Mississippi since the issuance of the Rules.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided as they become available through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Among the annotations are Editor's notes inserted by the publisher's editorial staff to explain references, call attention to obvious errors, inconsistencies or ambiguities in the Rules, the official Comments, Notes, and Forms, and to alert users to suggested new rules and introduce major changes. Also, when necessary brackets have been inserted around material in the text to correct misspellings, punctuation or language errors and incorrect references to the Rules, sections of the Code, titles of positions, or names of institutions.

Amendments, additions, changes, and revisions of rules.

Amendments, additions, changes, and revisions received since the March 2020 Supplement of the Mississippi Court Rules are to the following:

Uniform Rules of Procedure for Justice Court

Rules amended and renumbered

Bankruptcy Courts for Northern and Southern Districts of Mississippi

Interim Rule 1007
Interim Rule 1020
Interim Rule 2009
Interim Rule 2012
Interim Rule 2015
Interim Rule 3010
Interim Rule 3011
Interim Rule 3014
Interim Rule 3016
Interim Rule 3017.1
Interim Rule 3017.2
Interim Rule 3018
Interim Rule 3019

Information, suggestions, comments, and questions.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer service, and other company information.

For further information or assistance, please call us toll free at (800) 833-9844, fax us toll free at (800) 643-1280, email us at customer.support@bender.com, or write to: Mississippi Editor, LexisNexis, 555 Middle Creek Parkway Colorado Springs, CO 80921.

October 2020 LexisNexis

USER'S GUIDE

This guide is designed to help both lawyer and layperson get the most out of the Mississippi Court Rules Annotated. Information about key features of the Court Rules and suggestions for their more effective use are given under the following headings:

—General Information
—Analyses
—Attorney General Opinions
—Cross References
—Editor's Notes
—Index
—Judicial Decisions
—Research and Practice References

If you have a question not addressed by the User's Guide, or comments about the Court Rules, you may contact us by calling us toll free at (800) 833-9844, faxing us toll free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Editor, LexisNexis, 555 Middle Creek Parkway Colorado Springs, CO 80921.

GENERAL INFORMATION

The Mississippi Court Rules are published by LexisNexis in a fully-annotated softcover two-volume set, which is replaced annually and supplemented semi-annually.

Volume 1 of the two-volume set includes the Rules of Civil Procedure, Rules of Criminal Procedure and Rules of Evidence. Volume 2 includes the remaining State court rules, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and are edited only for stylistic consistency.

ANALYSES

Each set of rules is preceded by an analysis. The analysis details the scope of the set and enables the user to see at a glance the content of the unit without resorting to a page-by-page examination of the Rules volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the attorney general for the state of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant rules under the heading "Attorney General Opinions." The citation at the end of each note includes the name of the person requesting the opinion, the date of the opinion, and the opinion number.

USER'S GUIDE

CROSS REFERENCES

Cross references refer the user to other statutes or rules that may affect a rule or give it context. Cross references do not cite all related rules, as these can be identified by using the indexes following each set of rules.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a rule not apparent from the rule's text, or special circumstances surrounding enactment or amendment of the rule.

INDEX

Each set of rules is immediately followed by an index. As accurate and thorough as the indexes are, there is no such thing as an index that is affordable, convenient, and perfect. Your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory foreword to the index appears in the first volume of the Index to the Mississippi Code of 1972 Annotated.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent rules, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations may be cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the rule under which the citation appears, or a topic related to the rule.

USER'S GUIDE

These citations are intended only as a starting point for library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

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MISSISSIPPI RULES OF APPELLATE PROCEDURE

Adopted Effective January 1, 1995; Amended Effective October 25, 2018

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APPENDIX IV. FORMS FOR COURT REPORTERS

Cross References — Practice and procedure in Supreme Court, see Mississippi Code of 1972 § 11-3-1 et seq.

Appeals, see Mississippi Code of 1972 § 11-51-1 et seq.

APPLICABILITY OF RULES

Rule 1. Scope of rules.

These rules govern procedure in appeals to the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi; proceedings on petitions for writs; other relief which the Supreme Court or the Court of Appeals or a justice of the Supreme Court or judge of the Court of Appeals is empowered to grant; and appeals from county court to circuit court. When these rules provide for the making of a motion in the trial court, the procedure for making such motion shall be in accordance with the practice of the trial court. (Amended effective July 1, 2017; amended effective May 5, 2020.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 1 replaced Miss.Sup.Ct.R. 1, embracing proceedings in the Court of Appeals. 644-647 So.2d XXIII-XXIV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Electronic filing in most appellate matters became mandatory on January 1, 2014. Under Section 1.D. of the Appellate E-Filing Administrative Procedures, "all briefs, motions, responses, and compliance documents . . . must be filed electronically." Section 4 exempts sealed and confidential cases, pro se litigants, and documents other than briefs, motions, responses and compliance documents, all of which must be filed conventionally.

These rules are not to be construed to extend or limit jurisdiction of the Supreme Court, except that Rule 5 is intended to expand the occasions upon which the Court may exercise its power to hear interlocutory appeals. *See Southern Farm Bureau Cas. Ins. v. Holland*, 469 So. 2d 55, 62-64 (Miss. 1985), (Anderson, J., concurring). The jurisdictional statute permits interlocutory appeals "in cases particularly provided for by law." Miss. Code Ann. § 9-3-9 (Supp. 1994). These rules are "law." *See Newell v. State*, 308 So. 2d 71 (Miss. 1975).

Appeals from county court to circuit are controlled, in part, by the Mississippi Rules of Appellate Procedure, *Van Meter v. Alford*, 774 So. 2d 430, 432 (Miss. 2000) (quoting *Am. Inv'rs. Inc. v. King*, 733 So.2d 830, 832 (Miss. 1999)).

Rules which provide for the making of a motion in the trial court include Rules 4(g), extension of time to appeal; 6, determination of *in forma pauperis* status; 8(b), stay on appeal to be first sought in trial court; and 10(e) correction of record on appeal. Trial court practice is governed by the Mississippi Rules of Civil Procedure, Mississippi Rules of Evidence, Mississippi Rules of Criminal Procedure, applicable uniform rules, and local rules where adopted pursuant to M.R.C.P. 83 or MRCrP 1.9. The term "trial court" in these rules includes a circuit or chancery court sitting as an appellate court. Rule 46(b) concerning the admission of foreign attorneys governs admission in trial courts, in administrative agencies, and in the appellate courts.

The Mississippi Rules of Appellate Procedure, effective January 1, 1995, are based on the Mississippi Supreme Court Rules and were adopted to include procedure in the Court of Appeals of the State of Mississippi pursuant to Miss. Code Ann. § 9-4-1 et seq. (Supp. 1994). (Amended effective July 1, 2017.)

[Comment amended effective October 25, 2018, to address electronic filing; amended effective May 5, 2020, to add the third paragraph.]

Rule 2. Penalties for noncompliance with rules; suspension of rules.

(a) *Dismissal of appeal.*

(1) Mandatory Dismissal. An appeal shall be dismissed if the notice of appeal was not timely filed pursuant to Rules 4 or 5.

(2) Discretionary Dismissal. An appeal may be dismissed upon motion of a party or on motion of the appropriate appellate court (i) when the court determines that there is an obvious failure to prosecute an appeal; or (ii) when a party fails to comply substantially with these rules. When either court, on its own motion or on motion of a party, determines that dismissal may be warranted under this Rule 2(a)(2), the clerk of the Supreme Court shall give written notice to the party in default, apprising the party of the nature of the deficiency. If the party in default fails to correct the deficiency within fourteen

14 days after notification, the appeal shall be dismissed by the clerk of the Supreme Court. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official. Motions for additional time in which to file briefs will not be entertained after the notice of the deficiency has issued.

(b) *Other sanctions.* The Supreme Court or the Court of Appeals may, after reasonable notice given by the clerk of the Supreme Court and opportunity to show cause to the contrary, and after hearing, if requested, impose such sanctions as may be appropriate on any party, court reporter, trial court clerk, or attorney who fails to comply with these rules or any order issued pursuant to these rules. Trial court judges have concurrent jurisdiction to sanction any party, court reporter, trial court clerk, or attorney who fails to comply with Rules 3, 10, and 11. A copy of any such sanction order shall be served on the clerk of the Supreme Court and may be reviewed by the Supreme Court for abuse of discretion.

(c) *Suspension of rules.* In the interest of expediting decision, or for other good cause shown, the Supreme Court or the Court of Appeals may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. The time for taking an appeal under Rules 4 or 5 may be extended in criminal and post-conviction cases, but not in civil cases. (Amended effective January 1, 1999; amended effective June 29, 2017.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective July 1, 1997, the Comment to Rule 2 was amended to reflect the promulgation of new Rule 4(h). 689-692 So.2d LXVI (West Miss. Cases 1997).

Effective January 1, 1995, Miss.R. App. P. 2 replaced Miss.Sup.Ct.R. 2, embracing proceedings in the Court of Appeals. 644-647 So.2d XXIV-XXVI (West Miss.Cases 1994).

Effective March 17, 1994, Miss.Sup.Ct.R. 2(a)(2) was amended to provide that if the party in default fails to correct the deficiency within 14 days after notification, the appeal shall be dismissed by the clerk. 632-635 So.2d XLII-XLIII (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1998.]

COMMENT

Perpetuating the spirit underlying the former rules of the Mississippi Supreme Court, the present rules will be construed to facilitate the just and efficient disposition of causes brought before the Supreme Court and the Court of Appeals. Accordingly, compliance with even the most technical requirements of the rules is encouraged.

Under Rule 2(a)(1), if an appeal is not taken within the time specified in Rules 4 or 5, either court, on its own motion or on motion of party, shall dismiss it. Rule 4(g) states when an extension of time may be granted by the trial court. Rule 2(c) provides for the suspension of Rule 2(a)(1) in criminal and post-conviction cases.

Where dismissal appears warranted for any other reason, the rule provides for the clerk to give written notice of the deficiency to counsel for the defaulting party. Specifically, the clerk will notify counsel that the party is in default in some manner and has 14 days to correct the noted deficiency. If the deficiency is not corrected within 14 days after notification, the appeal shall be dismissed by the clerk. In pro se proceedings, notification of deficiency shall be sent to the party. The rule recognizes that deficiencies may result from actions of third parties, such as court officials. The primary responsibility, however, for assuring correction of the deficiency remains with the defaulting party.

Rule 2(b) states the inherent disciplinary authority of either appellate court over parties and officers of the court. Because Rules 3, 10, and 11 involve actions to be taken in the trial court to prepare the appellate record, the rule recognizes the concurrent jurisdiction of the trial court to impose sanctions for noncompliance with those rules. See *Wilson v. State*, 461 So. 2d 728, 729 (Miss. 1984).

Rule 2(c) provides for suspension of the rules for reasons of expedition or good cause shown. It is important to note that in civil cases, under Rule 2(c), the Court may not extend the time for taking an appeal except as provided by Rule 4 (g) or (h). This is a departure from prior law. *See Clark v. City of Pascagoula*, 473 So.2d 477 (Miss.1985); *but see Roberts v. Grafe Auto Co., Inc.*, 653 So.2d 250, 250-251 (Miss. 1994) (The Court held that several verdict forms signed by the trial court were not "final judgments" triggering the 30-day time for appeal. The Court further stated that "[e]ven assuming arguendo that the forms could be construed to be final judgments, [appellant] was never notified of their existence, and her right to due process would protect her from losing her right to appeal since she was not aware of the jury verdict forms and was not notified of their existence.") Where a party has filed an otherwise timely notice of appeal which is ineffective under Rule 4(d) or 4(e), the Court may, however, suspend the operation of 4(d) or 4(e) to prevent manifest injustice. This is not an extension of the "time for taking" the appeal. Also, because procedures for criminal appeals apply to post-conviction relief proceedings, Miss. Code Ann. § 99-39-25(1), the Supreme Court may suspend the rules and extend the time for taking an appeal in those proceedings. Rules 2(c) and 4(g) thus supplant the procedure described in *Jones v. State*, 355 So.2d 89, 90 (Miss.1978).

[Amended effective July 1, 1997; amended effective April 18, 2007; amended effective June 29, 2017.]

JUDICIAL DECISIONS

Applicability.
Child custody.
Discretionary dismissal.
Inherent power of supreme court.
Notice of default.
Suspension of rules.
Timeliness of appeal.

Applicability.

Miss. R. App. P. 2 simply does not apply to the deficiency of lack of jurisdiction. The deficiencies as described in Miss. R. App. P. 2(a)(2) occur only (1) when the court determines that there is an obvious failure to prosecute an appeal or (2) when a party fails to comply substantially with the Mississippi Rules of Appellate Procedure. Belmont Holding, LLC v. Davis Monuments, LLC, 253 So. 3d 323 (Miss. 2018).

Child custody.

Automatic reversal is not required when an appellee fails to file a brief, but reversal is appropriate if the appellant's argument creates doubt in the judiciousness of the trial court's judgment. However, when child custody is at issue, an appellate court is compelled to review the record, despite the appellee's failure to file a brief. Voss v. Doughty, 242 So. 3d 952 (Miss. Ct. App. 2018).

Discretionary dismissal.

Fugitive dismissal rule applied in a custody matter where a mother fled the jurisdiction with her children, and the mother's appeal of a chancery court order awarding custody of the children to their father was dismissed because dismissal was in the best interests of the children. D.C. v. D.C., 988 So. 2d 359 (Miss. 2008), writ of certiorari denied by 555 U.S. 1178, 129 S. Ct. 1320, 173 L. Ed. 2d 597, 2009 U.S. LEXIS 1554, 77 U.S.L.W. 3468 (2009), remanded by 13 So. 3d 269, 2009 Miss. LEXIS 270 (Miss. 2009).

Rule 2(a)(2) applies to appeals from county court to circuit court. Van Meter v. Alford, 774 So. 2d 430 (Miss. 2000).

A motion to dismiss cannot be substituted for an official notice of deficiencies from the court clerk; even where a party has moved to dismiss, the plain language of Rule 2(a)(2) requires a notice from the clerk of the deficiency and a 14-day opportunity to cure the deficiency. Van Meter v. Alford, 774 So. 2d 430 (Miss. 2000).

Inherent power of supreme court.

When an appeal has been referred to the Court of Appeals and only then is it discovered that the appeal is interlocutory in nature, the court's authority to suspend the appellate rules under the rule and proceed to reach the merits of the case is the same as that possessed by the Supreme Court. McGriggs v. Montgomery, 710 So. 2d 886 (Ct. App. 1998).

Supreme Court's delegation of responsibility for attorney discipline to complaint tribunal and to Mississippi Bar, as expressed in Rules of Discipline, does not strip court of its fundamental responsibility to prevent injustice to litigants; court retains ability to regulate, pending further proceedings under rules, the operation of the courts and the fair and just progress of litigation. In re Lewis, 654 So. 2d 1379 (Miss. 1995).

Notice of default.

Nowhere did it appear that the circuit clerk gave appellant written notice of his deficiencies in his appeal and fourteen days in which to cure any deficiencies before the circuit court dismissed his appeal from a decision of the Mississippi Department of Employment Security's Board of Review. Therefore, the circuit court erred in dismissing the appeal. Pilate v. Miss. Dep't of Empl. Sec., — So. 3d —, 2019 Miss. App. LEXIS 319 (Miss. Ct. App. July 16, 2019).

Circuit court erred in dismissing a lessor's appeal from a county court's judgment in favor of a lessee because the lessor was never informed of the deficiencies in his appellate brief and was never given 14 days to cure such deficiencies after receiving such notice as required by Miss. R. App. P. 2(a)(2). Adams v. A & C Entm't, 6 So. 3d 1082 (Miss. 2009).

Trial court erred in dismissing an employee's appeal of an order denying a claim for workers' compensation benefits because notwithstanding the employee's failure to file a brief pursuant to Miss. R. App. P. 2(a)(2), the employee was entitled to written notice from the clerk of the deficiencies in the appeal and a 14-day period in which to cure any deficiencies. Thomas v. Five County Child Dev. Program, Inc., 958 So. 2d 247 (Miss. Ct. App. 2007).

In employee's personal-injury action, although his brief was filed after the deadline, the supreme court never gave him notice of the alleged default and his brief was filed only two days after the deadline, and according to Miss. R. App. P. 2(a)(2) well within the 14 days, the supreme court permitted parties to correct a deficiency; therefore, the employee's appeal was not dismissed under Rule 2. Green v. Allendale Planting Co., 954 So. 2d 1032 (Miss. 2007).

Dismissal of the citizen's action challenging the issuance of environmental permits was improper where the imperfection was in the bond amount, not in the notice of appeal; Miss. R. App. P. 2(a)(2) required the clerk of the court to give written notice to the citizen of his default and an opportunity to correct the deficiency before granting the dismissal. Wheeler v. Miss. Dep't of Envtl. Quality Permit Bd., 856 So. 2d 700 (Miss. Ct. App. 2003).

Suspension of rules.

Notice of appeal and other documents filed by the county did not follow the technical requirements as to the form of applying for a writ prohibition, and the supreme court declined to suspend the requirements because it did not have enough information to determine whether the case presented a convincing argument that an irremedial injustice would occur if county court judges were not prohibited from setting the salaries of the court administrators. Hinds Cty. v. Skinner (in re Appointment & Setting Sala ry for Cty. Court Adm'r & Deputy Court Adm'r), — So. 3d —, 2019 Miss. LEXIS 233 (Miss. June 13, 2019).

Trial court was without authority to grant an out-of-time appeal because it had been more than six months since the entry of the order overruling defendant's post-trial motion; however, the court of appeals, for good cause as shown in defendant's letter, suspended the thirty-day appeal-time requirement and allowed the appeal to proceed. Shelby v. State, 242 So. 3d 885 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 70, 2018 Miss. LEXIS 223 (Miss. May 17, 2018).

Although an appellate recommend that in the interest of expediting decisions, an appellate court was to suspend the rule requiring a final judgment, the appellate court had no authority to suspend the Mississippi Rules of Civil Procedure. Havard v. Sumrall, 194 So. 3d 188 (Miss. Ct. App. 2016).

Because it was not unlikely that defendant's notice of appeal was delivered to prison authorities within the time frame allowed by Miss. R. App. P. 4(a), the appellate court exercised its discretion under Miss. R. App. P. 2(c) to suspend the thirty-day filing requirement to the extent defendant's filing may have been untimely. Small v. State, 141 So. 3d 61 (Miss. Ct. App. 2014).

Supreme Court of Mississippi would not consider defendant's Miss. R. App. P. 17 petition for a writ of certiorari because defendant's motion for rehearing, filed more than two weeks past the deadline, was untimely under Miss. R. App. P. 40, and defendant did not argue that there was good cause to suspend the rule under Miss. R. App. P. 2(c). McCalpin v. State, 166 So. 3d 24 (Miss. 2013).

Court of appeals exercised its discretion under Miss. R. App. P. 2(c) to suspend the thirty-day requirement to the extent defendant's filing could have been untimely because defendant's notice of appeal was received only five days late, and it was possible that the documents were delivered to prison authorities within the time frame allowed by Miss. R. App. P. 4(a). Whatley v. State, 123 So. 3d 461 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 530 (Miss. Oct. 10, 2013).

Though appellant failed to file its appeal with 14 days of the appellate court's decision as required by Miss. R. App. P. 40(a), because the matter was of significant importance in setting precedent, the appellate court exercised its authority under Miss. R. App. P. 2(c) to recall the mandate and issue a modified opinion on rehearing. Sweet Valley Missionary Baptist Church v. Alfa Ins. Corp., 124 So. 3d 683 (Miss. Ct. App. 2013), affirmed by, remanded by 124 So. 3d 643, 2013 Miss. LEXIS 574 (Miss. Oct. 31, 2013).

In a case in which defendant's appeal was clearly untimely under Miss. R. App. P. 4(a), pursuant to Miss. R. App. P. 2(c), the appellate court suspended Rule 4(a) and heard defendant's appeal on the merits because defendant was represented by counsel, and there was a strong likelihood that any fault for the untimely appeal was not attributable to defendant. A dismissal for lack of jurisdiction by the appellate court would likely result in a subsequent claim by defendant of ineffective assistance of counsel. Williams v. State, 30 So. 3d 375 (Miss. Ct. App. 2010).

Where appellant's notice of appeal was filed one day late, but no mention of this jurisdictional issue was made by either appellant or the State, as the dismissal of the appeal for lack of jurisdiction would likely result in appellant's filing a motion for post-conviction relief citing ineffective assistance of appellate counsel based on the failure to file a timely notice of appeal, the court suspended the mandatory dismissal rule pursuant to Miss. R. App. P. 2(c). Blakeney v. State, — So. 3d —, 2009 Miss. App. LEXIS 887 (Miss. Ct. App. Dec. 8, 2009), opinion withdrawn by, substituted opinion at 2009 Miss. App. LEXIS 978 (Miss. Ct. App. Dec. 8, 2009).

Since the circuit court dismissed defendant's motion for post-conviction relief on January 2, 2008, pursuant to Miss. R. App. P. 4(a), defendant's notice of appeal should have been filed by February 1, 2008; however, since the notice was not filed until February 25, 2008, the appeal was untimely, unless it is saved by the prison mailbox rule. Because there was no evidence in the record to show when defendant delivered his notice of appeal to prison officials, the appellate court exercised its discretion under Miss. R. App. P. 2(c) to suspend the 30-day filing requirement, as defendant's filing may have been timely under the prison mailbox rule. Walton v. State, 16 So. 3d 66 (Miss. Ct. App. 2009).

Justice demanded that the appellate court suspend the time for taking an appeal and afford appellate review to defendant's fully briefed appeal. Dorsey v. State, 986 So. 2d 1080 (Miss. Ct. App. 2008).

Appellate court lacked jurisdiction to hear the denial of a motion for post-conviction relief because defendant did not file a notice of appeal within 30 days, as required by Miss. R. App. P. 4(a); it declined to suspend the requirement under Miss. R. App. P. 2(c) because defendant did not try to reopen the time for appeal or seek an extension. Minchew v. State, 967 So. 2d 1244 (Miss. Ct. App. 2007).

Even though an appeal from the denial of post-conviction relief was not timely filed, an appellate court was permitted to consider the merits to prevent manifest injustice under Miss. R. App. P. 4(g), Miss. R. App. P. 2(c),and Miss. Code Ann. § 99-39-25(1). Heafner v. State, 947 So. 2d 354 (Miss. Ct. App. 2007).

Appellate court could not tell when defendant's petition was given to prison officials to mail, and it did not know when defendant received notice of the ruling on his motion by the circuit court; because of the unique circumstances presented in this case, the appellate court opted to exercise its discretion under Miss. R. App. P. 2(c) to suspend the 30-day filing requirement to the extent defendant's filing may have been untimely under the prison mailbox rule; thus, jurisdiction was proper. Vance v. State, 941 So. 2d 225 (Miss. Ct. App. 2006).

Suspension of Miss. R. App. 4(a) was appropriate pursuant to Miss. R. App. P. 2(c) because it was clearly not defendant's fault that his appeal was untimely; his counsel inadvertently failed to file defendant's motion for a new trial as well as the notice of appeal. McFarland v. State, 936 So. 2d 960 (Miss. Ct. App. 2006).

Where defendant was not at fault for failing to file a formal notice of appeal from his conviction, and no in-court waiver of appeal had been made, the Supreme Court exercised its discretion, in the interests of justice, to allow defendant to file untimely appeal. DeLoach v. State, 890 So. 2d 852 (Miss. 2004).

Miss. R. App. P. 2(c) allows either the Mississippi Supreme Court or the Mississippi Court of Appeals to suspend the application of any of its rules upon its own motion in the interest of expediting a decision or for other good cause shown. Franklin v. Franklin, 864 So. 2d 970 (Miss. Ct. App. 2003).

While the trial court's authority to sua sponte grant a capital murder defendant an out-of-time appeal, almost one year after the denial of a motion for new trial, was doubtful, the demands of justice required suspension of the rules under Miss. R. App. P. 2(c) and allowance of defendant's appeal. Coleman v. State, 804 So. 2d 1032 (Miss. 2002).

The court used its power to suspend the operation of the rules for good cause where the appellant failed to list an issue in the statement of issues in his brief, but the issue was listed in the table of contents as a separate issue and presented separately in the body of the brief. Starks v. State, 798 So. 2d 562 (Miss. Ct. App. 2001).

A court may not suspend the rules regarding the time for taking a civil appeal. Pinkston ex rel. Pinkston v. Mississippi DOT, 757 So. 2d 1071 (Miss. Ct. App. 2000).

Where a petition for rehearing is granted and the result of the case changed, ultimate losing party should not be absolutely denied an opportunity to point out error which could not have been apparent in previous decision of the court. Shaw v. State, 702 So. 2d 386 (Miss. 1997).

Timeliness of appeal.

Appellant's notice of appeal was untimely, and thus, his appeal had to be dismissed, because appellant filed the notice of appeal more than thirty days after the judgment was entered; as appellant waited an additional thirty-three days to file his notice of appeal, and there were no extraordinary circumstances, it was not in the interest of justice to suspend the thirty-day requirement Cane v. State, 206 So. 3d 1268 (Miss. Ct. App. 2016).

Dismissal of an appeal for lack of jurisdiction was appropriate, when the parties did not receive notice of the circuit court's order for more than fifteen months after it was entered and, upon receiving notice of the order, the circuit court granted the appellant's motion to reopen the time for filing the notice of appeal, because the notice of appeal was untimely filed and the circuit court lacked authority to reopen the time for filing the notice of appeal. Bailey v. Chamblee, 192 So. 3d 1078 (Miss. Ct. App. 2016).

Circuit court and the Supreme Court of Mississippi lacked jurisdiction to review the patient's interlocutory appeal because it was noticed to and handled by the wrong court where interlocutory appeals from a county court could only be made to the Supreme Court of Mississippi-not to the circuit court-and the patient failed to notice his appeal within 21 days. Brown v. Collections, Inc., 188 So. 3d 1171 (Miss. 2016).

Dismissal of an appeal was warranted as a trial court erred by granting the administratrix of a decedent's estate additional time to file an appeal in a medical malpractice action against doctors and a hospital because the court granted the administratrix relief from an order certifying as final for appeal an order dismissing the doctors that was corrected by two separate orders by the court. Moreover, the running of the time to appeal began when the hospital, the last defendant, was dismissed from the case. Pope v. Brock, 179 So. 3d 1120 (Miss. 2015).

Borrower's appeal was dismissed for lack of jurisdiction because the borrower's notice of appeal was untimely where he filed the notice one day outside the 30-day time limit and the record contained no motion by the borrower requesting an extension of time to file the appeal or an order granting an extension of time to file the appeal after the trial court's dismissal of the borrower's motion to reconsider. Rodwell v. Chrisman, 149 So. 3d 566 (Miss. Ct. App. 2014).

Reversal was not required in defendant's driving under the influence because of the fact that the city's appellee brief was struck by a circuit court judge for being untimely. The circuit court was not required to automatically reverse defendant's conviction if it could affirm the conviction with confidence, which it did. Carlson v. City of Ridgeland, 131 So. 3d 1220 (Miss. Ct. App. 2013), writ of certiorari denied by 132 So. 3d 579, 2014 Miss. LEXIS 112 (Miss. Feb. 13, 2014).

State supreme court declined to address a bar applicant's previous appeal because that appeal was noticed 14 months after the final judgment in that case, which was outside the 30 days allowed for filing an appeal, and any attempt to appeal that order was subject to mandatory dismissal pursuant to Miss. R. App. P. 4(a) and 2(a)(1). Griffin v. Miss. Bd. of Bar Admissions, 113 So. 3d 1257 (Miss. 2013).

Appellate court exercised its discretion under Miss. R. App. P. 2(c) to allow an inmate's late appeal of the denial of his motion to reconsider the dismissal of his post-conviction relief petition where the notice of appeal was received only one day late, and the documents could have been delivered to prison authorities within the 30-day time frame of Miss. R. App. P. 4(a). Campbell v. State, 126 So. 3d 61 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 609 (Miss. Nov. 21, 2013).

As victims of chemical exposure filed their notice of appeal almost 90 days after the entry of a trial court order, requiring enforcement of a settlement of the victims' personal injury claims against a pecan company, the appellate court lacked jurisdiction to consider the validity of that order pursuant to Miss. R. App. P. 2(a) and 4(a); the filing of a motion for relief from judgment under Miss. R. Civ. P. 60(b) did not alter the 30-day jurisdictional filing requirement. Melton v. Smith's Pecans, 65 So. 3d 853 (Miss. Ct. App. 2011), writ of certiorari denied by 65 So. 3d 310, 2011 Miss. LEXIS 342 (Miss. 2011).

Circuit court erred in dismissing an employee's appeal of a city civil service commission's affirmance of his termination on the ground that pursuant to Miss. Unif. Cir. & Cty. R. 5.05 his, decision to wait forty days before he requested its assistance in compelling the commission to file the transcript exceeded the allowable thirty days because under Miss. R. App. P. 2(a)(2), the employee was entitled to notice from the circuit clerk of the deficiency in his appeal and fourteen days to correct any deficiency, and that lack of notice and opportunity to remedy the deficiency deprived the employee of due process; the circuit court may still dismiss an appeal for which an appellant has failed to timely provide a record, but the Mississippi Rules of Appellate Procedure apply to an appeal to circuit court. Fields v. City of Clarksdale, 27 So. 3d 464 (Miss. Ct. App. 2010), remanded by 133 So. 3d 373, 2014 Miss. App. LEXIS 90 (Miss. Ct. App. 2014).

Circuit court erred in dismissing an employee's appeal of a city civil service commission's affirmance of his termination on the ground that pursuant to Miss. Unif. Cir. & Cty. R. 5.05 his, decision to wait forty days before he requested its assistance in compelling the commission to file the transcript exceeded the allowable thirty days because under Miss. R. App. P. 2(a)(2), the employee was entitled to notice from the circuit clerk of the deficiency in his appeal and fourteen days to correct any deficiency, and that lack of notice and opportunity to remedy the deficiency deprived the employee of due process; the circuit court may still dismiss an appeal for which an appellant has failed to timely provide a record, but the Mississippi Rules of Appellate Procedure apply to an appeal to circuit court. Fields v. City of Clarksdale, 27 So. 3d 464 (Miss. Ct. App. 2010), remanded by 133 So. 3d 373, 2014 Miss. App. LEXIS 90 (Miss. Ct. App. 2014).

Instead of filing a notice of appeal within the 30-day requirement, defendant's attorney filed additional post-trial motions; although the failure to timely file a notice of appeal would bar an appeal from review, under Miss. R. App. P. 2(c), the apepllate court could suspend the rules in the interest of expediting decision. Ross v. State, 16 So. 3d 47 (Miss. Ct. App. 2009).

Employer's motion to dismiss an employee's appeal from the denial of his workers' compensation benefits claim was denied because, when the employee eventually received an official notice from the supreme court clerk, he immediately cured the deficiencies within the 14-day time period of Miss. R. App. P. 2(a). Brown v. Robinson Prop. Group, Ltd., 24 So. 3d 320 (Miss. Ct. App. 2009).

Defendant failed to show why 30-day requirement of Miss. R. App. P. 4(a) should be suspended; therefore, a dismissal of defendant's appeal from the denial of his post-conviction relief petition was warranted. Moore v. State, 8 So. 3d 262 (Miss. Ct. App. 2009).

Where an appellate court did not know when defendant delivered a notice of appeal to prison officials for mailing, nor did the court know when defendant received notice of the trial court's ruling on a motion for post-conviction relief, the court exercised its discretion under Miss. R. App. P. 2(c) to suspend the 30-day requirement to the extent defendant's filing might have been untimely filed under the prison mailbox rule. Hunt v. State, 11 So. 3d 764 (Miss. Ct. App. 2009).

Where an attorney appealed the denial of unemployment benefits, it was error to find that the attorney's appeal was untimely based on the failure to include a civil cover sheet, because the attorney demonstrated good cause for an extension of the filing deadline since the cover sheet requirement did not bar the otherwise timely notice of appeal. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340 (Miss. Ct. App. 2008).

Defendant's appeal of an order denying a motion to clarify a rape sentence was dismissed for lack of appellate jurisdiction where the notice of appeal was not filed within 30 days, as required by Miss. R. App. P. 4(a); hence, the appellate court was required to dismiss the appeal pursuant to Miss. R. App. P. 2(a)(1). Rabalais v. State, 986 So. 2d 1050 (Miss. Ct. App. 2008).

Where appellant failed to timely file her appeal of a child custody order with the clerk of the trial court within thirty days from the entry of judgment as required by Miss. R. App. P. 4(a), the appellate court lacked jurisdiction to hear the appeal. The appellate court was required to dismiss the appeal in accordance with Miss. R. App. P. 2(a)(1). Dudley v. Harris, 979 So. 2d 692 (Miss. Ct. App. 2008).

Given that defendant's notice of appeal occurred more than 30 days after the date of entry of the judgment or order appealed from, Miss. R. App. P. 4(a), defendant's appeal was procedurally barred. Lett v. State, 965 So. 2d 1066 (Miss. 2007).

Pursuant to Miss. R. App. P. 2(a)(1), defendant's appeal of the denial of post-conviction relief was dismissed for failure to timely file the appeal; the appeal was filed 67 days after the trial court denied the motion for post-conviction relief, well beyond the 30 days required by Miss. R. App. P. 4(a). Craft v. State, 966 So. 2d 856 (Miss. Ct. App. 2007).

Appellate court lacked jurisdiction to hear an appeal from an order denying a motion to reconsider summary judgment because the order was not appealed within 30 days of its entry, notwithstanding that a circuit court clerk had failed to notify the parties of the order as required by Miss. R. Civ. P. 77(d). Payne v. Magnolia Healthcare, Inc., 984 So. 2d 290 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2008 Miss. LEXIS 291 (Miss. June 12, 2008).

Even though a notice of appeal was untimely in a case involving a motion for post-conviction relief, an appellate court chose to proceed with hearing the merits of such, due to the unique circumstances of the case. Jefferson v. State, 958 So. 2d 1276 (Miss. Ct. App. 2007).

Order denying defendant's third request for post-conviction relief was upheld where defendant's appeal was untimely under Miss. R. App. P. 2(a)(1); in addition, defendant failed to provide the appellate court with any facts that would satisfy any of the exceptions to the successive writ bar in Miss. Code Ann. § 99-39-23(6). Johnson v. State, 962 So. 2d 87 (Miss. Ct. App. 2007), writ of certiorari dismissed en banc by 966 So. 2d 172, 2007 Miss. LEXIS 551 (Miss. 2007).

As the state did not overcome the presumption that the inmate's notice of appeal from the denial of his motion for post-conviction relief was timely filed, the appeal did not have to be dismissed. Jewell v. State, 946 So. 2d 810 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 947 So. 2d 960, 2007 Miss. LEXIS 56 (Miss. 2007).

Court declined to dismiss the inmate's pro se appeal of the trial court's denial of his motion for post-conviction relief because the state had not established that the motion was filed outside of the 30-day time limitation when the mailbox rule applied to the inmate; there was no evidence to show that the inmate's motion was not presented for filing within the 30-day period. Melton v. State, 930 So. 2d 452 (Miss. Ct. App. 2006).

Miss. R. App. P. 2(c) allowed the Court of Appeals of Mississippi, for good cause shown, to suspend the requirement of Miss. R. App. P. 4 that an appeal be filed within 30 days of the entry of judgment; however, the trial court judge committed no error in denying defendant's motion for out-of-time appeal, as the judge had no discretion to allow an out-of-time appeal outside of 180 days from the entry of judgment, and the appellate court concluded that it did not find that justice demanded granting defendant an out-of-time appeal 10 years after his conviction. Parker v. State, 921 So. 2d 397 (Miss. Ct. App. 2006).

Where defendant's conviction of misdemeanor driving under the influence of intoxicating liquor was affirmed on January 16, 2003, his motion for reconsideration and/or out of time appeal filed on December, 3, 2003 was untimely. The interests of justice did not favor allowing for an out-of-time appeal; defendant failed to prove his claim that he did not receive notice that his conviction was upheld. Havard v. State, 911 So. 2d 991 (Miss. Ct. App. 2005).

Pursuant to the time periods for filing an appeal under Miss. R. App.P. 4(a) and 26(a), a terminated department of corrections employee's appeal of the circuit court's upholding of his termination was filed late and, because the circuit court had not granted his motion for a late appeal, the Supreme Court of Mississippi was without jurisdiction over the instant appeal, and the supreme court could not extend the time for filing. Redmond v. Miss. Dep't of Corr., 910 So. 2d 1211 (Miss. Ct. App. 2005).

Where defendant attempted an appeal of an order denying his motion for post-conviction relief, as the appeal was filed more than 30 days after entry of the order, it was untimely under Miss. R. App. 4(a), and was properly dismissed under Miss. R. App. 2(a)(1). Penn v. State, 909 So. 2d 135 (Miss. Ct. App. 2005).

Pursuant to Miss. R. App. P. 2(a) and 4(a), the appellate court will not consider an appeal that is not timely filed. The former employee filed her notice of appeal regarding the denial of unemployment benefits roughly 42 days after the entry of the final judgment, and her appeal was subject to dismissal for that reason alone.

Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135 (Miss. Ct. App. 2005).

Miss. R. App. P. 2(a) provides for the dismissal of an appeal if the notice is not timely filed. Hence, after summary judgment was awarded to a home inspector in a homeowner's action for fraud and negligence, an appellate court dismissed the appeal because the appeal was filed one day beyond the 30-day deadline in Miss. R. App. P. 4(a). Hodnett v. Anderson, 913 So. 2d 994 (Miss. Ct. App. 2005).

Miss. R. App. P. 2(a) reflects the longstanding principle in the State of Mississippi that the failure to file a timely appeal leaves the appellate court without jurisdiction to consider the case. Hodnett v. Anderson, 913 So. 2d 994 (Miss. Ct. App. 2005).

Interlocutory appeal was never perfected by the lessors where it was obvious that other matters had to be addressed before a final resolution of the contempt issue could be reached; the decree from which the attempt to appeal was taken created ambiguities as to whether the trial court intended to enter an order of criminal or civil contempt. Morris v. Walden, 856 So. 2d 705 (Miss. Ct. App. 2003).

Appellate court had to dismiss defendant's appeal of his conviction for burglary of a commercial building, as his failure to file a timely notice of appeal within 30 days of the date the trial court denied his post-trial motions meant the appellate court lacked jurisdiction to hear his appeal. Franklin v. State, 853 So. 2d 158 (Miss. Ct. App. 2003).

Where bank filed its appeal more than thirty days after denial of its motion for new trial or judgment notwithstanding the verdict, bank was compelled to suffer penalty of dismissal, and bank's filing of motion for relief from judgment was irrelevant since filing of such a motion did not toll running of thirty-day time limit for appeal. Bank of Edwards v. Cassity Auto Sales, Inc., 599 So. 2d 579 (Miss. 1992).

Appellant's notice of appeal was dismissed as untimely; legal holiday corresponding to Washington's birthday was governed by statute, and when properly computed, time for perfecting appeal had passed. Moore v. Wax, 554 So. 2d 312 (Miss. 1989).

Rule 3. Appeal as of right — How taken.

(a) *Filing the notice of appeal.* In all cases, both civil and criminal, in which an appeal is permitted by law as of right to the Supreme Court, there shall be one procedure for perfecting such appeal. That procedure is prescribed in these rules. All statutes, other sets of rules, decisions or orders in conflict with these rules shall be of no further force or effect. An appeal permitted by law as of right from a trial court to the Supreme Court shall be taken by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the perfection of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Interlocutory appeals by permission shall be taken in the manner prescribed by Rule 5.

(b) *Joint or consolidated appeals.* If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court (or of the Court of Appeals in cases assigned to the Court of Appeals) upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) *Content of the notice of appeal.* The notice of appeal shall specify the party or parties taking the appeal and the party or parties against whom the appeal is taken, and shall designate as a whole or in part the judgment or order appealed from. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) *Service of the notice of appeal.* The clerk of the trial court shall serve notice of the filing of a notice of appeal by mailing a copy of the notice to counsel of record for each party other than the appellant, or, if a party is not represented by counsel, to the last known address of that party, and to the court reporter; and the clerk shall transmit to the clerk of the Supreme Court forthwith a copy of the notice of appeal, together with the docket fee as provided in Rule 3(e), and, with cost to the appellant, a certified copy of the trial court docket as of the date of the filing of the notice of appeal, a certified copy of the opinion, if any, and a certified copy of the judgment from which the appeal is being taken and a certified copy of the Civil Case Filing Form in civil cases or the Notice of Criminal Disposition Form in criminal cases. When an appeal is taken by a defendant in a criminal case, the clerk shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the clerk to serve notice shall not affect the perfection of the appeal. Service shall be sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies with the date of mailing.

(e) *Payment of fees.* Upon the filing of any separate or joint notice of appeal from the trial court, the appellant shall pay to the clerk of the trial court the docket fee to be received by the clerk of the trial court on behalf of the Supreme Court. (Amended June 21, 1996.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 21, 1996, Rule 3(d) was amended to require the clerk of the trial court to transmit the Civil Case Filing Form or the Notice of Criminal Disposition Form to the clerk of the Supreme Court. 673-678 So.2d XXXVII (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 3 replaced Miss.Sup.Ct.R. 3, embracing proceedings in the Court of Appeals. Rule 3(d) was further amended to require the clerk of the trial court to transmit additional documents to the clerk of the Supreme Court. 644-647 So.2d XXVI-XXVII (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 3 was amended to note that the fee to be paid under Rule 3(e) is provided by statute. 632-635 So.2d V (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1997; July 1, 1998.]

COMMENT

Rule 3 and Rule 4 combine to set forth the procedures and time frame for perfecting an appeal. The same procedures are to be used for appeals in civil and criminal cases. Rules 10 and 11 state how the content of the record on appeal is determined and how the record is completed and transmitted to the Court.

Subdivision 3(a) departs from prior practice and provides that the only absolutely necessary step in the process is the timely filing of the notice of appeal. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal. If the notice of appeal is not filed within the time specified in Rule 4, either the Supreme Court or the Court of Appeals, on its own motion or on motion of a party, will dismiss it. Failure to take any step, other than the timely filing of a notice of appeal, is ground for such action as either appellate court deems appropriate, which may include dismissal of the appeal. Steps which must be taken within seven days after filing the notice of appeal include the designation of the record under Rule 10(b)(1) and deposit of cost estimate under Rule 11(b)(1).

The appellant is required by M.R.C.P. 5(a) to serve on all parties a copy of the notice of appeal as submitted to the trial court clerk. Rule 3(d) requires the clerk to transmit to all parties and to the Supreme Court clerk copies of the notice of appeal indicating the date on which the notice of appeal was filed. Ordinarily, the appellant should supply the trial court clerk with a sufficient number of copies of the notice of appeal to accomplish this. The clerk may alternatively prepare the copies at the appellant's expense. The failure of the appellant or the trial court clerk to serve copies of the notice does not affect the perfection of the appeal.

The fee to be paid under Rule 3(e) is set by statute. See Miss. Code Ann. § 25-7-3 (1994).

JUDICIAL DECISIONS

Dismissal of Appeal.
Error not preserved.
Error preserved.
Improper notice of appeal.
Order to compel arbitration.
Parties.
Sanctions.
Timeliness.

Dismissal of Appeal.

Supreme Court of Mississippi denied a natural father's motion to strike the adoptive parents' appellate brief and dismiss their appeal because, while the parents' notice of appeal should have included the final judgment, the basis of the appeal was abundantly clear from the parents' statement of the issues and their brief of appellant. K.D.F. v. J.L.H., 933 So. 2d 971 (Miss. 2006).

Error not preserved.

Whether a trial court erred in denying a defendant's motion to designate his motion for a reduction of sentence as a motion for post-conviction relief was not properly before the court of appeals because although defendant raised the issue in his brief, no notice of appeal was given on the issue. Seal v. State, 38 So. 3d 635 (Miss. Ct. App. 2010).

Appellant failed to include one of the parties to the wrongful death suit in her notice of appeal. Pursuant to Miss. R. App. P. 3(c), judicial review was limited to those parties named in appellant's notice of appeal. Estate of Perry v. Mariner Health Care, Inc., 927 So. 2d 762 (Miss. Ct. App. 2006).

Because annexation objectors did not raise an issue at the trial level, the assignment of error was not properly preserved for purposes of appeal. Prestridge v. City of Petal, 841 So. 2d 1048 (Miss. 2003).

Error preserved.

Where a former husband appealed the trial court's award of attorney's fees to the former wife, it was not necessary for him to request a reconsideration in order to preserve the matter for appeal. Speights v. Speights, 126 So. 3d 76 (Miss. Ct. App. 2013).

Improper notice of appeal.

Because the chancellor's order generally denied a husband's post-trial motions, which included the issues raised on appeal, and in light of the Fletcher standard, the court would consider the merits of each of the husband's issues on appeal, even though the motions were not designated specifically in his pro se notice of appeal. McNeese v. McNeese, 119 So. 3d 264 (Miss. 2013).

Where an attorney appealed the denial of unemployment benefits, it was error to find that the attorney's appeal was untimely based on the failure to include a civil cover sheet, because the attorney demonstrated good cause for an extension of the filing deadline since the cover sheet requirement did not bar the otherwise timely notice of appeal. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340 (Miss. Ct. App. 2008).

Mother failed to comply with the Miss. R. App. P. 3 requirements where the event leading to her appeal had not yet occurred at the time she filed her notice of appeal, and thus the issue was not properly before the supreme court; however, the supreme court addressed the issue on its merits. J.E.W. v. T.G.S., 935 So. 2d 954 (Miss. 2006).

Order to compel arbitration.

A trial court's order compelling arbitration which disposes of all the issues before the court or orders the entire controversy to be arbitrated is a final decision, and therefore, immediately appealable, and further, any final decision with respect to arbitration is appealable to the Supreme Court pursuant to Miss. R. App. 3 and 4 (overruling Banks v. City Finance Co., 825 So. 2d 642 (Miss. 2002)). Sawyers v. Herrin-Gear Chevrolet Co., 26 So. 3d 1026 (Miss. 2010).

Parties.

Because the decedent's adult children did not appeal the chancellor's decision to void the warranty deeds conveying the subject property from the decedent to the decedent's children, they no longer possessed standing, pursuant to Miss. Code Ann. § 11-51-3 and Miss. R. App. P. 3, to appeal the chancellor's finding that the children's siblings obtained title to the property at issue by adverse possession. Posey v. Pope, 130 So. 3d 1183 (Miss. Ct. App. 2014).

Although a transportation company entered its appearance in an appeal and filed a brief, this action did not make it a party to the appeal since it was not made a party pursuant to Miss. R. App. P. 3(c). Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242 (Miss. Ct. App. 2010).

Sanctions.

Because Rule 3(a) is permissive as to the imposition of sanctions for appellate deficiencies, the appellate court should consider the full panoply of sanctions before imposing the most harsh sanction of dismissal. Van Meter v. Alford, 774 So. 2d 430 (Miss. 2000).

The dismissal of an appeal was too harsh a sanction where the appellant was delinquent in filing a designation of record, an estimation of costs, and a certificate of compliance. Van Meter v. Alford, 774 So. 2d 430 (Miss. 2000).

Timeliness.

Grandmother's appeal was timely where an immediate appeal of a denial of an application for leave to intervene under Miss. R. Civ. P. 24 was not required and the father did not file a brief in the current appeal, Miss. R. App. P. 31(d). S.G. v. D.C., 13 So. 3d 269 (Miss. 2009).

RESEARCH REFERENCES

ALR. Propriety and Sufficiency of Electronic Filing of Notice of Appeal in State Actions. 70 A.L.R.6th 661.

Rule 4. Appeal as of right — When taken.

(a) *Appeal and cross-appeals in civil and criminal cases.* Except as provided in Rules 4(d) and 4(e), in a civil or criminal case in which an appeal or cross-appeal is permitted by law as of right from a trial court to the Supreme Court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If a notice of appeal is mistakenly filed in the Supreme Court, the clerk of the Supreme Court shall note on it the date on which it was received and transmit it to the clerk of the trial court and it shall be deemed filed in the trial court on the date so noted.

(b) *Notice before entry of judgment.* A notice of appeal filed after the announcement of a decision or order but before the entry of the judgment or order shall be treated as filed after such entry and on the day of the entry.

(c) *Notice by another party.* If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires.

(d) *Post-trial motions in civil cases.* If any party files a timely motion of a type specified immediately below the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Mississippi Rules of Civil Procedure (1) for judgment under Rule 50(b); (2) under Rule 52(b) to amend or make additional findings of facts, whether or not granting the motion would alter the judgment; (3) under Rule 59 to alter or amend the judgment; (4) under Rule 59 for a new trial; or (5) for relief under Rule 60 if the motion is filed no later than 10 days after the entry of judgment. A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

(e) *Post-trial motions in criminal cases.* If a defendant makes a timely motion (1) for judgment of acquittal notwithstanding the verdict of the jury, or (2) for a new trial under MRCrP 25.1, the time for appeal for all parties shall run from the entry of the order denying such motion. Notwithstanding anything in this rule to the contrary, in criminal cases the 30 day period shall run from the date of the denial of any motion contemplated by this subparagraph, or from the date of imposition of sentence, whichever occurs later. A notice of appeal filed after the court announces a decision sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the provisions of Appellate Rule 3(c), a valid notice of appeal is effective to appeal from an order disposing of any of the above motions.

(f) *Parties under disability.* In the case of parties under a disability of infancy or unsoundness of mind, the various periods of time for which provision is made in this rule and within which periods of time action must be taken shall not begin to run until the date on which the disability of any such party shall have been removed. However, in cases where the appellant infant or person of unsound mind was a plaintiff or complainant, and in cases where such a person was a party defendant and there had been appointed for him or her a guardian ad litem, appeals to the Supreme Court shall be taken in the manner prescribed in this rule within two years of the entry of the judgment or order which would cause to commence the running of the 30 day time period for all other appellants as provided in this rule.

(g) *Extensions.* The trial court may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time otherwise prescribed by this rule. Any such motion which is filed before expiration of the prescribed time may be granted for good cause and may be ex parte unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to other parties, and the motion shall be granted only upon a showing of excusable neglect. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(h) *Reopening time for appeal.* The trial court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening the time for appeal.

(i) *Taxpayer appeals.* If the board of supervisors of any county, or the mayor and board of aldermen of any city, town or village, or any other board, commission or other officer of any county, or municipality, or district, sued in an official capacity, fails to file a notice of appeal under Rule 4(a) within 20 days after the date of entry of an adverse judgment or order, or within 7 days after filing of a notice by another party pursuant to Rule 4(c), any taxpayer of the county, municipality or district shall have the right at the taxpayer's own expense to employ private counsel to prosecute the appeal in compliance with these rules. If the governmental entity files a notice of appeal, the appeal shall not be dismissed if any such taxpayer objects and prosecutes the appeal at the taxpayer's own expense. (Amended effective July 1, 1997; July 1, 1998; July 1, 2017.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective July 1, 1997, a new Rule 4(h) was added to provide for reopening of time for appeal in the event that a notice of entry of judgment is not received. The former Rule 4(h) was redesignated 4(i). 689-692 So. 2d LXII (West Miss. Cases 1997).

Effective January 1, 1995, Miss.R.App.P. 4 replaced Miss.Sup.Ct.R. 4, embracing proceedings in the Court of Appeals. 644-647 So.2d XXVII-XXX (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 4 was amended to delete references to repealed statutes and material concerning the transition from statutory procedures to Rule practice. 632-635 So. 2d V (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 4 was amended to provide that the date of the entry of the judgment is the date the judgment is entered in the general docket of the clerk of court, and to delete an outdated case citation. 632-635 So.2d XLIV-XLV (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1997; July 1, 1998.]

COMMENT

Rule 4 applies to appeals and cross-appeals in all civil and criminal cases. The date of entry of judgment is the date the judgment is entered in the general docket of the clerk of the court. M.R.C.P. 58.

The notice of appeal requirement applies to all forms of appeal, including cross-appeals. Rule 4(c) requires that a notice of appeal for a cross-appeal be filed within 14 days after the date on which the first notice of appeal was filed, unless a longer period is prescribed by another provision of Rule 4.

Previously, Rule 4(d) specified certain post-trial motions that had to await disposition before a valid notice of appeal could be filed. Any notice of appeal filed before such disposition had no force or effect. Rule 4(e) had the same provisions for specified post-trial motions in criminal cases. Those provisions of Rules 4(d) and 4(e), however, created a trap for an unsuspecting litigant who filed a notice of appeal before a post trial motion, or while a post trial motion was pending. Because the Rules required a party to file a new notice of appeal after the motion's disposition, unless a new notice was filed the Supreme Court lacked jurisdiction to hear the appeal. *See In re Kimbrough*, 680 So.2d 799 (Miss.1996). Many litigants, especially *pro se* litigants, failed to file the second notice of appeal, and the Court expressed dissatisfaction with the rule. *See id.* (Banks, J., dissenting) and (McRae, J., dissenting).

Rules 4(d) and 4(e) now provide that a notice of appeal filed before the disposition of a specified post trial motion will become effective upon disposition of the motion. A notice filed before the filing of one of the specified motions or after the filing of a motion but before its disposition is, in effect, suspended until the motions disposition, whereupon the previously filed notice effectively places jurisdiction in the Supreme Court. Still, ordinarily, the filing of a notice of appeal should come after the disposition of these motions. An appeal should not be noticed and docketed in the Supreme Court while it is still possible that the appealing party may obtain relief in the trial court.

Because a notice of appeal will ripen into an effective appeal upon disposition of a post trial motion, in some instances there will be an appeal from a judgment that has been altered substantially because the motion was granted in whole or in part. Many such appeals will be dismissed for want of prosecution when the appellant fails to meet the briefing schedule. But, the appellee may also move to strike the appeal. When responding to such a motion, the appellant would have an opportunity to state that, even though some relief sought in a post trial motion was granted, the appellant still plans to pursue the appeal. Because the appellant's response would provide the appellee with sufficient notice of the appellant's intentions, an additional notice of appeal is unnecessary.

While Rule 4 is patterned after its Federal counterpart, Rule 4(d) departs from Federal practice by providing that a valid notice of appeal is effective to appeal from an order disposing of a post trial tolling motion. Under Fed. R. App. P. 4(a)(4), if a party wishes to appeal from the disposition of a post trial tolling motion, the party must amend the notice to so indicate. However, requiring amendment of the notice of appeal would create a new, albeit less severe, trap for unsuspecting litigants, without serving a substantial purpose.

Rule 4(d) is also amended to include, among motions that extend the time for filing a notice of appeal, a Rule 60 motion that is filed within 10 days after entry of judgment. This eliminates the difficulty of determining whether a post trial motion made within 10 days after entry of a judgment is a Rule 59 motion, which tolls the time for filing an appeal, or a Rule 60 motion, which historically has not tolled the time. *See Michael v. Michael,* 650 So.2d 469 (Miss. 1995).

Rule 4(f) continues to recognize an extension for parties under a legal disability. See *Parks v. Knight*, 491 So. 2d 217 (Miss. 1986).

Rule 4(g) is based on Fed. R. App. P. 4(a)(5). A motion filed before expiration of the 30 day period may be ex parte and may be granted for any "good cause." This standard is identical to that found in Rule 26. The extension may not go beyond 30 days after the time prescribed in Rule 4(a).

If the motion is not filed until the extension period has begun to run, the burden rests on the appellant to show the failure to file a timely notice was a result of "excusable neglect." Mere failure to learn of entry of the judgment is generally not a ground for showing excusable neglect. Counsel in a case taken under advisement has a duty to check the docket regularly. But see *City of Gulfport v. Saxon*, 437 So. 2d 1215, 1217 (Miss. 1983) (when trial court sits as an appellate court, parties may reasonably expect notification from the court or clerk when a ruling is made). Filing a notice is a simple act, and a party must do all it could reasonably be expected to do to perfect the appeal in a timely fashion. Counsel's failure to read published rules of court and counsel's reliance on mistaken legal advice from a trial court clerk will not show excusable neglect. *Campbell v. Bowlin*, 724 F. 2d 484, 488 (5th Cir. 1984); *Reed v. Kroger Co.*, 478 F. 2d 1268 (T.E.C.A. 1973). Excusable neglect will not be shown by counsel's busy trial schedule. *Pinero Schroeder v. Fed. Nat'l Mtg. Ass'n*, 574 F. 2d 1117 (1st Cir. 1978).

On the other hand, a party misled by actions of the court can establish excusable neglect. See *Chipser v. Kohlmeyer & Co.*, 600 F. 2d 1061, 1063 (5th Cir. 1979); *In re Morrow*, 502 F. 2d 520, 522 (5th Cir. 1974) (dictum). Excusable neglect may be shown where a timely mailed notice was late because of unanticipated and uncontrollable delays in the mail. *Fallen v. United States*, 378 U.S. 139, 84 S. Ct. 1689, 12 L. Ed. 2d 760 (1964). See generally, 20 W. Moore, *Federal Practice* § 304-13.

An excusable neglect motion must be filed within the 30 day extension period. The extension will be limited to that period, or to a period ending 10 days after the entry of an order granting the motion, whichever occurs later.

In criminal cases, the Court may suspend Rule 4 to permit out of time appeals. Post-conviction relief proceedings are governed by the rules controlling criminal appeals. Miss. Code Ann. § 99-39-25(1). No such suspension, however, is permitted in a civil case. See Rules 2(c); 26(b).

Rule 4(h) is patterned after Fed. R. App. P. 4(a)(6), which was added to the Federal Rules in 1991. Rule 4(h) provides a limited opportunity for relief, independent of and in addition to that available under Rule 4(g), in circumstances where the notice of entry of a judgment or order, required to be mailed by the clerk of the trial court pursuant to Rule 77(d) of the Mississippi Rules of Civil Procedure, is either not received by a party or is received so late as to impair the opportunity to file a timely notice of appeal. Rule 4(h) allows a trial court to reopen for a brief period the time for appeal upon a finding that notice of entry of a judgment or order was not received from the clerk or a party within 21 days of its entry and that no party would be prejudiced. While the party seeking relief under Rule 4(h) bears the burden of persuading the trial court of lack of timely notice, a specific factual denial of receipt of notice rebuts and terminates the presumption that mailed notice was received. *See Nunley v. City of Los Angeles*, 52 F.3d 792, 798 (9th Cir. 1995). "Prejudice" means some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal, consequences that are present in every appeal. Prejudice might arise, for example, if the appellee had taken some action in reliance on the expiration of the normal time period for filing a notice of appeal.

While the trial court retains some discretion to refuse to reopen the time for appeal even when the requirements of Rule (4)(h) are met, the concept of excusable neglect embodied in Rule 4(g) simply has no place in the application of Rule 4(h). *See Avolio v. Suffolk,* 29 F.3d 50, 53 (2d Cir. 1994). "To hold otherwise would negate the addition of Rule 4[h], which provides an avenue of relief separate and apart from Rule 4[g]." *Nunley v. City of Los Angeles*, 52 F.3d 792, 797 (9th Cir. 1995). Thus, "where non-receipt has been proven and no other party would be prejudiced, the denial of relief cannot rest on [a lack of excusable neglect, such as] a party's failure to learn independently of the entry of judgment during the thirty-day period for filing notices of appeal." *Id.* at 798.

Reopening may be ordered only upon a motion filed within 180 days of the entry of a judgment or order or within 7 days of receipt of notice of such entry, whichever is earlier. This provision establishes an outer time limit of 180 days for a party who fails to receive timely notice of entry of a judgment or order to seek additional time to appeal and enables any winning party to shorten the 180-day period by sending (and establishing proof of receipt of) its own notice of entry of a judgment or order, as authorized by Miss. R. Civ. P. 77(d). Winning parties are encouraged to send their own notice in order to lessen the chance that a judge will accept a claim of non-receipt in the face of evidence that notices were sent by both the clerk and the winning party. Receipt of a winning party's notice will shorten only the time for reopening the time for appeal under this subdivision, leaving the normal time periods for appeal unaffected.

If the motion is granted, the trial court may reopen the time for filing a notice of appeal only for a period of 14 days from the date of entry of the order reopening the time for appeal.

The taxpayer who prosecutes an appeal under Rule 4(i) must comply with these rules and file a timely notice of appeal under 4(a), or 4(c), if applicable.

[Amended effective July 1, 1997; July 1, 1998; April 18, 2007; amended effective June 29, 2017.]

JUDICIAL DECISIONS

Applicability to administrative appeals.
Applicability to municipal court appeals.
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Applicability to administrative appeals.

Erroneous filing of a timely notice of appeal seeking review of a decision of the Mississippi Oil and Gas Board adopting a rule regarding disposal of waste from gas production sites containing radioactive material directly with the chancery court having jurisdiction over the action rather than with the Board did not deprive the chancery court of jurisdiction to consider the appeal; appellate court applied the analogous provisions of Miss. R. App. 4 to find that the filing was sufficient to confer jurisdiction on the chancery court. Adams v. Miss. State Oil & Gas Bd., 854 So. 2d 7 (Miss. Ct. App. 2003), remanded by 80 So. 3d 869, 2012 Miss. App. LEXIS 96 (Miss. Ct. App. 2012).

Applicability to municipal court appeals.

Miss. R. App. P. 4 is not applicable to appeals from municipal court to circuit court as Miss. R. App. P. 1 states that the Mississippi Rules of Appellate Procedure govern procedure in appeals to the Supreme Court of Mississippi and the Court of Appeals of the State of Mississippi, and proceedings on petitions for writs or other relief which the Supreme Court or the Court of Appeals are empowered to grant. Appeals from municipal court are governed by Miss. Unif. Cir. & Cty. R. 12.02. Williams v. State, 155 So. 3d 892 (Miss. Ct. App. 2014), writ of certiorari dismissed by 154 So. 3d 33, 2015 Miss. LEXIS 47, 2015 WL 467457 (Miss. Jan. 22, 2015).

Cross-appeals.

Race promoter's request to address his claim that he was entitled to attorney's fees and expenses was not considered as he had not filed the required notice of cross-appeal under Miss. R. App. P. 4(c). Rasdon v. Thrash, 225 So. 3d 557 (Miss. Ct. App. 2017).

Appellate court lacked jurisdiction over a father's cross-appeal, seeking to fully emancipate his son, because the father missed his time to file a cross-appeal, Miss. R. App. P. 4(c), and the chancellor failed to rule on the father's request that his time to file a cross-appeal be reopened, Rule 4(g). Finch v. Finch, 137 So. 3d 314 (Miss. Ct. App. 2012), affirmed in part and reversed in part by, remanded by 137 So. 3d 227, 2014 Miss. LEXIS 33 (Miss. Jan. 16, 2014).

Passenger did not file a cross-appeal against a bus owner, even though she could have done so pursuant to Miss. R. App. P. 4(c) if she felt aggrieved by the trial court's failure to instruct the jury regarding the owner's heightened duty of care that it owed her Boyd Tunica, Inc. v. Premier Transp. Servs., 30 So. 3d 1242 (Miss. Ct. App. 2010).

In a child support and visitation case, a mother's appeal was procedurally barred under Miss. R. App. P. 4 because it was filed more than 14 days after the date the notice of appeal was filed. Allen v. Allen, 953 So. 2d 279 (Miss. Ct. App. 2007).

An appellee should not be required to file a cross-appeal unless he or she is aggrieved by the trial court's judgment. Dunn v. Dunn, 853 So. 2d 1150 (Miss. 2003).

Where wife won a favorable judgment in the chancery court, her position on appeal was to have the appellate court affirm the judgment; she did not seek to alter or reverse the judgment below, and therefore, she was not required to raise any issues on cross-appeal, and could not raise an issue that had not ripened. Dunn v. Dunn, 853 So. 2d 1150 (Miss. 2003).

Dismissal proper.

Intervenor argued that Miss. R. App. P. 4(i) supported his right to intervene, post-judgment; however, the suit had been dismissed pursuant to an agreement in another suit, and the intervenor failed to realize that a fundamental element of the rule required an adverse judgment or order. Hayes v. Leflore County Bd. of Supervisors, 935 So. 2d 1015 (Miss. 2006).

Pursuant to Miss. R. App. P. 2(a) and 4(a), the appellate court will not consider an appeal that is not timely filed. The former employee filed her notice of appeal regarding the denial of unemployment benefits roughly 42 days after the entry of the final judgment by the circuit court, and her appeal was subject to dismissal for that reason alone. Westbrook v. Miss. Empl. Sec. Comm'n, 910 So. 2d 1135 (Miss. Ct. App. 2005).

Trial judge did not abuse his discretion by denying defendant's out-of-time appeal where he failed to file his notice of appeal within the required 30-day period of Miss. R. App. P. 4(a) and had not shown excusable neglect or any other exception to justify allowing the untimely appeal. Monroe v. State, 843 So. 2d 83 (Miss. Ct. App. 2003), writ of certiorari denied by 864 So. 2d 282, 2004 Miss. LEXIS 50 (Miss. 2004).

The appellate court properly dismissed defendant's appeal for lack of jurisdiction where the record did not reflect that there was ever an order granting or denying defendant's motion to reopen time for appeal. Since the trial court had made no ruling on defendant's motion to reopen time for appeal, the appellate court did not have the jurisdiction necessary to hear the appeal. Forkner v. State, 852 So. 2d 604 (Miss. Ct. App. 2002), remanded by 2004 Miss. LEXIS 381 (Miss. Apr. 15, 2004).

Rather than timely appealing to the appellate court the denial of his first motion for reconsideration, the husband chose to wait and file a second motion for reconsideration after the time had expired for filing a notice of appeal to the appellate court; such an appeal was untimely and the case was properly dismissed. Bresler v. Bresler, 824 So. 2d 641 (Miss. Ct. App. 2002).

Where the appellant failed to perfect her appeal within the required 30 days and she could not show that the failure to timely perfect her appeal was a result of excusable neglect, the court would refrain from addressing the issues raised by her appeal. Harlow v. Grandma's House, Inc., 730 So. 2d 73 (Miss. 1998).

Chancellor abused his discretion in allowing plaintiff's late appeal, where plaintiff made no showing of excusable neglect and gave no reason at all for delay in filing notice of appeal, and where she failed to provide defendants with notice of her motion for leave to appeal out of time. Guthrie v. Renfroe, 703 So. 2d 846 (Miss. 1997).

Where bank filed its appeal more than thirty days after denial of its motion for new trial or judgment notwithstanding the verdict, bank was compelled to suffer penalty of dismissal, and bank's filing of motion for relief from judgment was irrelevant since filing of such a motion did not toll running of thirty-day time limit for appeal. Bank of Edwards v. Cassity Auto Sales, Inc., 599 So. 2d 579 (Miss. 1992).

Supreme court had no jurisdiction to hear appeal, where more than six months had passed since date of order which had actually resolved the issue in question. Pittman v. Commonwealth Nat'l Life Ins. Co., 562 So. 2d 73 (Miss. 1990).

Appellant's notice of appeal was dismissed as untimely; legal holiday corresponding to Washington's birthday was governed by statute, and when properly computed, time for perfecting appeal had passed. Moore v. Wax, 554 So. 2d 312 (Miss. 1989).

Extensions of time.

Circuit court properly denied a client's motions for an extension of time to file her notice of appeal because, while the length of delay was minimal, the underlying medical-malpractice claim was more than four years old, it remained unexplained why her previous counsel did not file for an extension during the 28 days that he remained with the firm following the dismissal of the client's complaint, and why the simple act of filing the motion was not delegated to another attorney sooner, in order to avoid such a misfortunate delay. Palmer v. Clark Clinic, Inc., 271 So. 3d 680 (Miss. Ct. App. 2018).

Chancellor abused its discretion in granting a gas station operator's motion to extend the time in which to file a notice of appeal because, although the operator stated that the decision to appeal was based upon a business analysis that was not completed until after the thirty-day filing period had expired and that the operator acted in good faith, the operator did not demonstrate excusable neglect. Almasri v. Hyde-Smith, 246 So. 3d 84 (Miss. Ct. App. 2018).

Good cause existed for the trial court to grant defendant additional time to file his notice of appeal because defendant indicated he was indigent and could not afford to hire appellate counsel or pay the filing fees and costs associated with preparing the record for appeal. Hartzog v. State, 240 So. 3d 462 (Miss. Ct. App. 2017).

Mississippi Supreme Court adopts the following four-part test to determine the existence of excusable neglect in failing to timely appeal: (1) the danger of prejudice to the non-movant, (2) the length of the delay and the delay's potential impact on judicial proceedings, (3) the reason for the delay, including whether the delay was within the reasonable control of the movant, and (4) whether the movant acted in good faith. Nunnery v. Nunnery, 195 So. 3d 747 (Miss. 2016).

It was not an abuse of discretion to find a decedent's descendants did not show the descendants' attorney's excusable neglect in failing to timely appeal due to a death in the attorney's family because the attorney's failure to call up the attorney's new trial motion for 15 months was properly considered, as was the advanced age of an opposing co-executor and co-executrix and lengthy trial and pretrial proceedings. Nunnery v. Nunnery, 195 So. 3d 747 (Miss. 2016).

Dismissal of an appeal for lack of jurisdiction was appropriate, when the parties did not receive notice of the circuit court's order for more than fifteen months after it was entered and, upon receiving notice of the order, the circuit court granted the appellant's motion to reopen the time for filing the notice of appeal, because the notice of appeal was untimely filed and the circuit court lacked authority to reopen the time for filing the notice of appeal. Bailey v. Chamblee, 192 So. 3d 1078 (Miss. Ct. App. 2016).

In an easement dispute, a special court did not abuse its discretion by refusing to reopen the time for an appeal under this rule because there was evidence in the record to show that prejudice would have resulted; the grantees had been trying to sell their property since 2007, and it would have been difficult to sell due to the protracted litigation. Moreover, the special court did not abuse its discretion given its express findings that the grantors deliberately violated a court-approved settlement agreement. Crosby v. Mittelstaedt, 186 So. 3d 415 (Miss. Ct. App. 2016), dismissed by 2016 U.S. Dist. LEXIS 30986 (S.D. Miss. Mar. 10, 2016), dismissed by 2019 U.S. Dist. LEXIS 35787 (S.D. Miss. Mar. 6, 2019).

Chancery court did not abuse its discretion in denying appellants' motion for an extension of time to file a notice of appeal because 21 days had elapsed between the entry of the final judgment and counsel's brother's accident, but counsel did not provide an explanation as to why the notice of appeal was not filed within those 21 days; and counsel's statement that after learning of his brother's accident, he was not paying attention to his law practice and did not feel like he needed to pay attention to the demands of his law practice did not suggest excusable neglect. Nunnery v. Nunnery, 195 So. 3d 809 (Miss. Ct. App. 2015), affirmed by 195 So. 3d 747, 2016 Miss. LEXIS 283 (Miss. July 21, 2016).

Chancellor properly denied a husband's motion for additional time to file a notice of appeal nunc pro tunc because his first notice of appeal was filed after the 30-day statutory deadline, while the chancellor had authority to grant an extension, he properly determined that excusable neglect was not shown by counsel's busy trial schedule, and there was no reason to believe that the chancellor would change the outcome of his decision if his jurisdiction finding were found to be erroneous. Bruton v. Bruton, 162 So. 3d 872 (Miss. Ct. App. 2015).

Wife's appeal of a divorce decree was timely as the deadline for the appeal was extended since the last day of the appeal period ran on Confederate Memorial Day, which was a legal holiday. Wilson v. Wilson, 115 So. 3d 144 (Miss. Ct. App. 2013).

Where a husband filed a notice of appeal in a property distribution matter 49 days after the entry of the original judgment, but only 19 days after the chancery court's sua sponte order of clarification, the appellate court had no authority to remand the case for the chancery court to rule on whether the notice of appeal should have been treated as a motion for extension of time under Miss. R. App. P. 4(g). Penton v. Penton, 156 So. 3d 323 (Miss. Ct. App. 2010).

No order was entered extending the time for filing a notice of appeal under Miss. R. App. P. 4(h), and although the parties appeared to have agreed that the issue of timeliness of the appeal would not be raised, an appellate court was required to note its own lack of jurisdiction. Because the appeal was not timely filed, it was dismissed for lack of jurisdiction. Dawson v. Burt Steel, Inc., 986 So. 2d 1051 (Miss. Ct. App. 2008).

Because the circuit court granted appellant's motion for extension of time to file her notice of appeal at the request of the appellate court, appellant's notice of appeal was timely. Busby v. Anderson, 978 So. 2d 670 (Miss. Ct. App. 2006), reversed by, appeal dismissed by 978 So. 2d 637, 2008 Miss. LEXIS 167 (Miss. 2008).

Although the employee argued that, pursuant to Miss. R. App. P. 4(g), the trial court never considered whether excusable neglect existed so as to allow her an extension of time in which to file an appeal, that issue, among others, was discussed at the hearing on the matter; the appellate court could not find that the trial judge had abused his discretion in failing to specifically delineate his reasons for denying the motion as the parties were aware of the issues the trial judge was ruling on as they had previously argued the issues before the trial judge. Odom v. Pub. Emples. Ret. Sys., 906 So. 2d 797 (Miss. Ct. App. — 2004).

Justice demanded that defendant's out-of-time criminal appeal be allowed because defendant did nothing to delay the perfection of his appeal; once appointed, new counsel was timely in all post-trial filings. McGruder v. State, 886 So. 2d 1 (Miss. 2003).

Circuit court erred in allowing defendant's out-of-time appeal where defendant did not file a notice of appeal within 180 days of the original entry of the order as required by Miss. R. App. P. 4(h); furthermore, neither the circuit court nor the appellate court had the authority to suspend the time limit. King v. City of Richland, 856 So. 2d 667 (Miss. Ct. App. 2003), writ of certiorari denied en banc by 864 So. 2d 282, 2004 Miss. LEXIS 46 (Miss. 2004).

Appellate court was required to dismiss appeal not only because defendant did not file a timely notice of appeal within 30 days of the trial court's denial of defendant's post-trial motions, but defendant did not file a motion to reopen the time for appeal which could have extended the time for defendant to appeal to 180 days from the date the final judgment was entered against him. Franklin v. State, 853 So. 2d 158 (Miss. Ct. App. 2003).

The appellant was not entitled to an extension of time to file a notice of appeal on the basis of lack of notice of the entry of judgment. Pinkston ex rel. Pinkston v. Mississippi DOT, 757 So. 2d 1071 (Miss. Ct. App. 2000).

Infancy.

Defendant was an infant, under the age of 21, at the time his motion for post-conviction collateral relief was denied. Thus, he had two years in which to file a timely appeal under Miss. R. App. P. 4(f). Haynes v. State, 906 So. 2d 762 (Miss. Ct. App. 2004).

Trial court erred in denying defendant's motion for out of time appeal where, within time for giving notice of appeal, he asked his attorney to appeal and his attorney failed to perfect an appeal, through no fault of defendant; moreover, running of time for filing notice of appeal was tolled for a substantial period of time, following entry of final judgment, due to defendant's minority. Triplett v. State, 579 So. 2d 555 (Miss. 1991).

Infant's notice of appeal was filed within two years of order denying her motion for relief of judgment, and therefore it was effective to place appeal on docket of supreme court and perfect an appeal of and from the circuit court's order. Cunningham v. Mitchell, 535 So. 2d 589 (Miss. 1988).

Order to compel arbitration.

A trial court's order compelling arbitration which disposes of all the issues before the court or orders the entire controversy to be arbitrated is a final decision, and therefore, immediately appealable, and further, any final decision with respect to arbitration is appealable to the Supreme Court pursuant to Miss. R. App. 3 and 4 (overruling Banks v. City Finance Co., 825 So. 2d 642 (Miss. 2002)). Sawyers v. Herrin-Gear Chevrolet Co., 26 So. 3d 1026 (Miss. 2010).

Post-conviction relief.

Court of appeals exercised its discretion under Miss. R. App. P. 2(c) to suspend the thirty-day requirement to the extent defendant's filing could have been untimely because defendant's notice of appeal was received only five days late, and it was possible that the documents were delivered to prison authorities within the time frame allowed by Miss. R. App. P. 4(a). Whatley v. State, 123 So. 3d 461 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 530 (Miss. Oct. 10, 2013).

State wholly failed to meet its burden of proving that an inmate failed to comply with Miss. R. App. P. 4(a) because the circuit court filed an order on December 19, 2008, dismissing the inmate's motion for post-conviction relief and then filed a second order to a slightly different effect on December 29, 2008; the inmate's appeal was taken from the second order and was filed on February 5, 2009. Catchings v. State, 35 So. 3d 552 (Miss. Ct. App. 2010).

Dismissal of appellant's, an inmate's, motion for postconviction relief was appropriate because the motion was barred as a successive writ under Miss. Code Ann. § 99-39-23(6). The inmate failed to appeal the dismissal of his first motion, on August 1, 2007, and the 30-day deadline for the inmate to appeal, which was calculated from the entry date of the August 1, 2007 judgment, had long since passed, Miss. R. App. P. 4(a). Aguirre v. State, 25 So. 3d 1102 (Miss. Ct. App. 2010).

State wholly failed to meet its burden of proving that an inmate failed to comply with Miss. R. App. P. 4(a) because the circuit court filed an order on December 19, 2008, dismissing the inmate's motion for post-conviction relief and then filed a second order to a slightly different effect on December 29, 2008; the inmate's appeal was taken from the second order and was filed on February 5, 2009. Catchings v. State, 35 So. 3d 552 (Miss. Ct. App. 2010).

Inmate's motion for postconviction relief was barred as a successive writ under Miss. Code Ann. § 99-39-23(6), where the inmate failed to appeal the dismissal of his first motion within the 30-day deadline for the inmate to appeal. Aguirre v. State, 25 So. 3d 1102 (Miss. Ct. App. 2010).

From the petitioner's challenge to the denial of his request for post-conviction relief following his guilty plea to touching a child for lustful purposes, the State's claim that the petitioner's motion was time-barred failed because it neither included any evidence of when the petitioner deposited his petition with prison officials nor pointed to evidence supported its position. Because the petitioner's petition was stamped filed within a reasonable period of time after the expiration of the three-year limitation, and the State failed to overcome the presumption of timeliness, it' claim was without merit. Lewis v. State, 988 So. 2d 942 (Miss. Ct. App. 2008).

Appellate court lacked jurisdiction to hear the denial of a motion for post-conviction relief because defendant did not file a notice of appeal within 30 days, as required by Miss. R. App. P. 4(a); it declined to suspend the requirement under Miss. R. App. P. 2(c) because defendant did not try to reopen the time for appeal or seek an extension. Minchew v. State, 967 So. 2d 1244 (Miss. Ct. App. 2007).

Even though an appeal from the denial of post-conviction relief was not timely filed, an appellate court was permitted to consider the merits to prevent manifest injustice under Miss. R. App. P. 4(g), Miss. R. App. P. 2(c), and Miss. Code Ann. § 99-39-25(1). Heafner v. State, 947 So. 2d 354 (Miss. Ct. App. 2007).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief but held that the notice of appeal was timely under the prison mailbox rules and Miss. R. App. P. 4(a) as the notice was received shortly after the 30-day time period and the state did not overcome the presumption of timeliness. Jewell v. State, 946 So. 2d 810 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 947 So. 2d 960, 2007 Miss. LEXIS 56 (Miss. 2007).

Court declined to dismiss the inmate's pro se appeal of the trial court's denial of his motion for post-conviction relief because the state had not established that the motion was filed outside of the 30-day time limitation when the mailbox rule applied to the inmate; there was no evidence to show that the inmate's motion was not presented for filing within the 30-day period. Melton v. State, 930 So. 2d 452 (Miss. Ct. App. 2006).

Appellate court affirmed the denial of an inmate's motion for post-conviction relief as the appeal of the denial of the motion was filed well beyond the 30-day time limit imposed by Miss. R. App. P. 4(h). Keyes v. State, 918 So. 2d 76 (Miss. Ct. App. 2005).

Where the circuit court denied appellant's petition for postconviction relief on July 2, 2003 and appellant filed his appeal on September 5, 2003, the appeal was untimely. Pearson v. State, 906 So. 2d 788 (Miss. Ct. App. 2004).

Motion for post-conviction collateral relief was properly dismissed as untimely where defendant filed his notice of appeal well beyond the 30 days allowed for prosecuting appeals from a final judgment of the trial court. Mosby v. State, 830 So. 2d 661 (Miss. Ct. App. 2002), writ of certiorari denied by 830 So. 2d 1251, 2002 Miss. App. LEXIS 718 (Miss. Ct. App. 2002).

Post-trial motions in civil cases.

Chancery court lacked jurisdiction to grant a wife's motion to reconsider following a husband's notice of appeal because the wife filed her Miss. R. Civ. P. 60 motion nearly two months after the chancery court entered its order regarding the parties' motions to reconsider; therefore, Miss. R. App. P. 4(d) did not apply, and the chancery court did not retain jurisdiction to grant the Rule 60 motion. Marter v. Marter, 95 So. 3d 733 (Miss. Ct. App. 2012).

Chancery court lacked jurisdiction to grant a wife's motion to reconsider following a husband's notice of appeal because the wife filed her Miss. R. Civ. P. 60 motion nearly two months after the chancery court entered its order regarding the parties' motions to reconsider; therefore, Miss. R. App. P. 4(d) did not apply, and the chancery court did not retain jurisdiction to grant the Rule 60 motion. Marter v. Marter, 95 So. 3d 733 (Miss. Ct. App. 2012).

Chancellor property denied a lessee's motion to clarify a judgment declaring a farm lease void where the motion to clarify, filed approximately 18 months after the lessee's motion for reconsideration was denied, was untimely under Miss. R. Civ. P. 59(e); because the motion to clarify was untimely, the lessee's appeal was untimely under Miss. R. App. P. 4(d). Brand v. Barr, 980 So. 2d 962 (Miss. Ct. App. 2008).

In a divorce case, a notice of appeal was timely under Miss. R. App. P. 4(b) where a husband's notice of appeal was filed while motions were still pending before the trial court; the notice was suspended pending disposition of the wife's motions, and it was revived upon their disposition. Phelps v. Phelps, 937 So. 2d 974 (Miss. Ct. App. 2006).

Trial court abused its discretion in denying defendants motion pursuant to Miss. R. App. P. 4(h), as defendants presented two affidavits specifically denying receipt by their respective law firms of notice of the entry of the judgment and order. Thus, the presumption that notice was received was both rebutted and terminated. Pre-Paid Legal Servs. v. Anderson, 873 So. 2d 1008 (Miss. 2004).

When the appellant filed his notice of appeal prior to the court's disposition of the appellee's motion for new trial, the notice's effectiveness was postponed but not canceled, and it became effective again without further action on the appellant's part when the chancellor entered judgment on the last outstanding post-trial motion; thus, it was not necessary for the appellant to file a supplemental notice of appeal and, therefore, the judge's denial of the appellant's motion to supplement did not preclude appellate consideration of the appeal which was initiated prior to the trial court's final order addressing the matter that formed the basis of the appeal. Davis v. Davis, 761 So. 2d 936 (Miss. Ct. App. 2000).

In order for a post-trial motion to effectively toll the time for taking an appeal, the motion must be timely filed in accordance with the time restrictions set out in M.R.C.P. 59(e). Byrd v. Biloxi Regional Medical Ctr., 722 So. 2d 166 (Miss. Ct. App. 1998).

Wife's post-trial motion in divorce action was a motion under M.R.C.P. Rule 59 rather than Rule 60, and since it was filed within ten legal days after entry of judgment it operated to stay running of time for perfecting appeal, and therefore husband's previously-filed notice of appeal was premature and ineffective to perfect appeal. Bruce v. Bruce, 587 So. 2d 898 (Miss. 1991).

Post-trial motions in criminal cases.

Defendant's appeal was dismissed because the record contained no order disposing of defendant's timely Miss. Unif. Cir. & Cty. R. 10.05 motion for a new trial, so defendant's premature notice of appeal was ineffective under Miss. R. App. P. 4(e) to confer jurisdiction on the appellate court, as an order addressing defendant's petition for a transcript, court docket, and discovery, treated as a collateral motion for post-conviction relief, did not dispose of the new trial motion. McCoy v. State, — So. 3d —, 2015 Miss. App. LEXIS 317 (Miss. Ct. App. June 9, 2015), reinstated by 2015 Miss. App. LEXIS 400 (Miss. Ct. App. July 28, 2015).

Court of appeals had jurisdiction of the issue of whether the trial court had the authority to amend defendant's sentence because pursuant to Miss. R. App. P. 4(a), defendant filed his notice of appeal within the thirty days of the denial of the motion for a reduction of sentence. Seal v. State, 38 So. 3d 635 (Miss. Ct. App. 2010).

Defendant's appeal was timely where he filed his motion for a new trial within the time prescribed by Miss. Unif. Cir. & Cty. R. 10.5, the trial judge waited more than three years to hear the motion, after which, a notice of appeal was timely filed pursuant to Miss. R. App. P. 4. Neither Rule 4(e) nor Miss. Unif. Cir. & Cty. R. 10.5 required the motion for new trial to be timely presented by defendant to the trial court. Jay v. State, 25 So. 3d 257 (Miss. 2009).

Since the circuit court dismissed defendant's motion for post-conviction relief on January 2, 2008, pursuant to Miss. R. App. P. 4(a), defendant's notice of appeal should have been filed by February 1, 2008; however, since the notice was not filed until February 25, 2008, the appeal was untimely, unless it is saved by the prison mailbox rule. Because there was no evidence in the record to show when defendant delivered his notice of appeal to prison officials, the appellate court exercised its discretion under Miss. R. App. P. 2(c) to suspend the 30-day filing requirement, as defendant's filing may have been timely under the prison mailbox rule. Walton v. State, 16 So. 3d 66 (Miss. Ct. App. 2009).

Because a petitioner's motion to alter or amend a trial court's judgment was missing from the record and it, thus, appeared that the petitioner, through no fault of his own, was not able to timely perfect his appeal, the issues were addressed on the merits pursuant to Miss. R. App. P. 4. Williams v. State, 4 So. 3d 388 (Miss. Ct. App. 2009).

Defendant's appeal of an order denying a motion to clarify a rape sentence was dismissed for lack of appellate jurisdiction where the notice of appeal was not filed within 30 days, as required by Miss. R. App. P. 4(a); hence, the appellate court was required to dismiss the appeal pursuant to Miss. R. App. P. 2(a)(1). Rabalais v. State, 986 So. 2d 1050 (Miss. Ct. App. 2008).

Miss. R. App. P. 2(c) allowed the Court of Appeals of Mississippi, for good cause shown, to suspend the requirement of Miss. R. App. P. 4 that an appeal be filed within 30 days of the entry of judgment; however, the trial court judge committed no error in denying defendant's motion for out-of-time appeal, as the judge had no discretion to allow an out-of-time appeal outside of 180 days from the entry of judgment, and the appellate court concluded that it did not find that justice demanded granting defendant an out-of-time appeal 10 years after his conviction. Parker v. State, 921 So. 2d 397 (Miss. Ct. App. 2006).

Where the time to appeal from the initial sentencing order had expired because defendant's post-trial motions to correct "scrivener's errors" in the sentencing order had not tolled the running of the appeal period under Miss. R. App. P. 4(e) and (g), the appellate court treated the motions to correct the sentencing orders that were filed in the trial court as motions under the Mississippi Uniform Collateral Post-Conviction Relief Act. Norwood v. State, 846 So. 2d 1048 (Miss. Ct. App. 2003).

Judgment notwithstanding the verdict is available to defendants in criminal cases where there is a guilty verdict or failure to reach a verdict; a motion for such a judgment must be made within time allowed for motions for new trial. McGraw v. State, 688 So. 2d 764 (Miss. 1997), cert. denied, 522 U.S. 830, 118 S. Ct. 95, 139 L. Ed. 2d 51 (1997).

Time for appeal.

School district's notice of appeal was timely because a principal filed a timely motion to alter or amend the judgment, which the chancery court granted; the school district then filed its notice of appeal within thirty days of the chancery court's order granting the principal's motion. Jackson Pub. Sch. Dist. v. Mason, — So. 3d —, 2019 Miss. App. LEXIS 459 (Miss. Ct. App. Sept. 17, 2019).

Chancery court properly entered a declaratory judgment in favor of a third owner and determined that he be vested with title to the real property requested because the Supreme Court of Mississippi relaxed the strict enforcement of time limits for filing appeals in cases where post-trial motions were not timely filed, privity of contract was not required to reform a deed under Mississippi law, the second owner was not a necessary party to the action inasmuch as he no longer held legal or equitable interest in the land, the third owner sought no personal judgment from or against the second owner, and his presence in the matter would not affect a final determination of the matter as between the third and first owners. Putney v. Sanford, — So. 3d —, 2019 Miss. App. LEXIS 343 (Miss. Ct. App. July 23, 2019).

Because a county board of supervisors filed a notice of appeal 96 days after a circuit court entered an order and opinion, reversing the board's decision, the appellate court lacked jurisdiction as the appeal was untimely filed in that the board's motion for rehearing in the circuit court, which was filed 11 days after the circuit court entered its judgment, did not toll the time for filing the notice of appeal. DeSoto Cty. v. Std. Constr. Co., — So. 3d —, 2019 Miss. App. LEXIS 31 (Miss. Ct. App. Jan. 22, 2019).

Appellant's notice of appeal was timely because the supreme court previously found his appeal to have been timely; although while the notice of appeal was premature, as a matter of law, it effectively was filed on the same day the order denying appellant's motion for post-conviction relief was entered on the docket, Kennedy v. State, — So. 3d —, 2018 Miss. LEXIS 392 (Miss. Sept. 27, 2018).

Party timely filed her motion to reconsider the judgment or to alter or amend the judgment within 10 days of the chancellor's judgment, which tolled the 30-day time period to file a notice appeal until disposition of the motion by the trial court; after the chancellor entered his order disposing of the party's motion to reconsider the judgment, she filed her notice of appeal within 30 days. Thornton v. Thornton, 270 So. 3d 186 (Miss. Ct. App. 2018).

Defendant's appeal was timely because his motion for appellate counsel and for other relief was filed within thirty days after the date the judgment was entered. Hartzog v. State, 240 So. 3d 462 (Miss. Ct. App. 2017).

Trial court was without authority to grant an out-of-time appeal because it had been more than six months since the entry of the order overruling defendant's post-trial motion; however, the court of appeals, for good cause as shown in defendant's letter, suspended the thirty-day appeal-time requirement and allowed the appeal to proceed. Shelby v. State, 242 So. 3d 885 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 70, 2018 Miss. LEXIS 223 (Miss. May 17, 2018).

It was clear that appellants' motions to reconsider — which were filed respectively in September and October 2015 after the trial judge denied their initial motions for a judgment notwithstanding the verdict or, alternatively, for a new trial — were nothing more than attempts to get the trial judge to reconsider, for a second time, the final judgment that the judge had entered back in April 2014. Because the motions did not allege anything that would remotely qualify them for treatment as motions for relief from judgment, appellants failed to timely file their appeals, which were subject to dismissal. Norris v. J.B. Hunt Transp., Inc., 234 So. 3d 437 (Miss. Ct. App. 2017), writ of certiorari denied by 2018 Miss. LEXIS 35 (Miss. Jan. 18, 2018).

Plaintiff's appeal of the circuit court's dismissal of her personal injury claims was procedurally barred because the plaintiff did not file her notice of appeal until seven days after the 30-day period allowed under the Rule, the Rule did not provide any additional time for filing by mail, the plaintiff never filed a motion requesting extra time to file her notice of appeal, and she failed to show an unanticipated or uncontrollable delay in the mail. Bolton v. Ill. Cent. R.R. Co., 218 So. 3d 311 (Miss. Ct. App. 2017).

Appellant's notice of appeal was untimely because it was filed more than thirty days after the judgment was entered; as appellant's motion for reconsideration was filed more than ten days after entry of the judgment dismissing his post-conviction relief motion, it was deemed a Miss. R. Civ. P. 60(b) motion, which did not toll the thirty-day time period for taking an appeal. Cane v. State, 206 So. 3d 1268 (Miss. Ct. App. 2016).

Appellant's notice of appeal was untimely, and thus, his appeal had to be dismissed, because appellant filed the notice of appeal more than thirty days after the judgment was entered; subsection (h) was inapplicable because appellant received notice of the order dismissing his post-conviction relief motion within twenty-one days of its entry, and subsection (g) was inapplicable because appellant never filed a motion for an extension of time to file his notice of appeal. Cane v. State, 206 So. 3d 1268 (Miss. Ct. App. 2016).

Motion to withdraw the divorce complaint did not affect the court's jurisdiction, as the motion was not a motion for relief from judgment, given that it was not filed within 10 days of the bench filing, and it did not fall under any other category of motions listed in the rule that would have rendered the notice of appeal ineffective; notice of appeal filed within 30 days of the judgment was effective, and jurisdiction was proper. McGrew v. McGrew, 184 So. 3d 302 (Miss. Ct. App. 2015).

Because a dog owner's post-trial motion to alter the judgment was untimely, it did not extend his time for filing a notice of appeal. Walker v. May, 166 So. 3d 613 (Miss. Ct. App. 2015).

Court of appeals did not have jurisdiction to address a dog owner's appeal because the owner failed to file a timely post-trial motion; the owner's motion to alter the judgment was filed thirty-one days after the final judgment had been entered, and thus, his notice of appeal, filed eight months after the judgment, was untimely. Walker v. May, 166 So. 3d 613 (Miss. Ct. App. 2015).

Borrower's appeal was dismissed for lack of jurisdiction because the borrower's notice of appeal was untimely where he filed the notice one day outside the 30-day time limit and the record contained no motion by the borrower requesting an extension of time to file the appeal or an order granting an extension of time to file the appeal after the trial court's dismissal of the borrower's motion to reconsider. Rodwell v. Chrisman, 149 So. 3d 566 (Miss. Ct. App. 2014).

Husband's motion for relief from judgment was timely and leave of the state's highest court was not required even though the motion was filed after the husband noted his appeal, since the motion was filed within six months of the final judgment and before the record was mailed to the appellate court; this rule applied to the suspension of the deadline by which to file a notice of appeal and did not create a deadline by which to file a motion for relief from judgment. McNeese v. Graves, 129 So. 3d 125 (Miss. Ct. App. 2013).

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Although an appellant's notice of appeal was not timely filed, the circuit court granted the appellant's motion to reopen the time for appeal because the appellant did not receive notice of the circuit court's order until the making of a timely filing of appeal was impossible. Smith v. State, 130 So. 3d 1187 (Miss. Ct. App. 2014).

While a timely motion under Miss. Unif. Cir. & Cty. R. 10.05. for judgment of acquittal notwithstanding the verdict of a jury tolled the running of the time to file a notice of appeal until the entry of the order denying such motion, defendant's untimely motion did not toll the time limit to appeal under Miss. R. App. P. 4. Conwill v. State, 168 So. 3d 1080 (Miss. Ct. App. 2013), writ of certiorari denied by 140 So. 3d 940, 2014 Miss. LEXIS 299 (Miss. June 12, 2014).

State supreme court declined to address a bar applicant's previous appeal because that appeal was noticed 14 months after the final judgment in that case, which was outside the 30 days allowed for filing an appeal, and any attempt to appeal that order was subject to mandatory dismissal pursuant to Miss. R. App. P. 4(a) and 2(a)(1). Griffin v. Miss. Bd. of Bar Admissions, 113 So. 3d 1257 (Miss. 2013).

As a trial court did not abuse its discretion in holding that the dismissal of a particular defendant was a final, appealable judgment under Miss. R. Civ. P. 54(b), an appeal was untimely under Miss. R. App. P. 4(a) where it was taken from a later order that dismissed the remaining defendants. Cook v. Wallot, 172 So. 3d 788 (Miss. Ct. App. 2013).

Father's claim that the amount of a child support award was outside of the guidelines was not preserved for appellate review because the father failed to appeal from the judgment within 30 days, as required by Miss. R. App. P. 4(a). Parker v.

Bliven, 59 So. 3d 619 (Miss. Ct. App. 2010), writ of certiorari denied by 58 So. 3d 693, 2011 Miss. LEXIS 212 (Miss. 2011).

Summary judgment for a neighbor in an owner's boundary dispute suit was affirmed because the owner did not appeal the summary judgment within 30 days as required by Miss. R. App. P. 4(a), and failed to timely file a Miss. R. Civ. P. 59 or Miss. R. Civ. P. 60 motion. Piernas v. Campiso, 95 So. 3d 723 (Miss. Ct. App. Aug. 7, 2012).

As victims of chemical exposure filed their notice of appeal almost 90 days after the entry of a trial court order, requiring enforcement of a settlement of the victims' personal injury claims against a pecan company, the appellate court lacked jurisdiction to consider the validity of that order pursuant to Miss. R. App. P. 2(a) and 4(a); the filing of a motion for relief from judgment under Miss. R. Civ. P. 60(b) did not alter the 30-day jurisdictional filing requirement. Melton v. Smith's Pecans, 65 So. 3d 853 (Miss. Ct. App. 2011), writ of certiorari denied by 65 So. 3d 310, 2011 Miss. LEXIS 342 (Miss. 2011).

In a personal injury action by guests against a casino, an appeal of the denial of the guests' motion to reconsider was time-barred where, following the denial of their reconsideration motion, the guests filed a recusal motion instead of filing a notice of appeal. The time for appeal commenced under Miss. R. App. P. 4(d) when the reconsideration motion was denied and the guests' failure to perfect a notice of appeal within 30 days subjected the appeal to dismissal. Doll v. BSL, Inc., 41 So. 3d 664 (Miss. 2010).

Where a husband filed a notice of appeal in a property distribution matter 49 days after the entry of the original judgment, but only 19 days after the chancery court's sua sponte order of clarification, the time period for filing the notice of appeal under Miss. R. App. P. 4(a) was not tolled because the order of clarification did not make any substantive changes to the original order. Penton v. Penton, 156 So. 3d 323 (Miss. Ct. App. 2010).

In a case in which defendant's appeal was clearly untimely under Miss. R. App. P. 4(a), pursuant to Miss. R. App. P. 2(c), the appellate court suspended Rule 4(a) and heard defendant's appeal on the merits because defendant was represented by counsel, and there was a strong likelihood that any fault for the untimely appeal was not attributable to defendant. A dismissal for lack of jurisdiction by the appellate court would likely result in a subsequent claim by defendant of ineffective assistance of counsel. Williams v. State, 30 So. 3d 375 (Miss. Ct. App. 2010).

Defendant's motion to reopen the time for appeal, pursuant to Miss. R. App. P. 4(h), was granted because defendant had not received notice from the clerk within 21 days that a motion for new trial had been denied. Jones v. State, 20 So. 3d 57 (Miss. Ct. App. 2009).

In a case in which a circuit court dismissed a company's amended complaint against a city as being time-barred, the company was procedurally barred from challenging the dismissal of its complaint. The company lost its right to pursue an appeal of the merits of the court's dismissal of its amended complaint when it failed to file either a timely Miss. R. Civ. P. 59 motion or a notice of appeal within 30 days of the entry of the order of dismissal, as required by Miss. R. App. P. 4(a). Finicky Pet Foods, Inc. v. City of Ocean Springs, 18 So. 3d 331 (Miss. Ct. App. 2009).

Instead of filing a notice of appeal within the 30-day requirement, defendant's attorney filed additional post-trial motions; although the failure to timely file a notice of appeal would bar an appeal from review, under Miss. R. App. P. 2(c), the apepllate court could suspend the rules in the interest of expediting decision. Ross v. State, 16 So. 3d 47 (Miss. Ct. App. 2009).

Defendant failed to show why 30-day requirement of Miss. R. App. P. 4(a) should be suspended; therefore, a dismissal of defendant's appeal from the denial of his post-conviction relief petition was warranted. Moore v. State, 8 So. 3d 262 (Miss. Ct. App. 2009).

Grandmother's appeal was timely where an immediate appeal of a denial of an application for leave to intervene under Miss. R. Civ. P. 24 was not required and the father did not file a brief in the current appeal, Miss. R. App. P. 31(d). S.G. v. D.C., 13 So. 3d 269 (Miss. 2009).

Circuit court abused its discretion in denying the Public Employees' Retirement System of Mississippi's out-of-time appeal, Miss. R. App. P. 4(h), because the record contained no credible evidence to support the inherent finding of prejudice; nothing showed that the employee took any action in detrimental reliance upon the circuit court's judgment. Miss. Pub. Emples. Ret. Sys. v. Albert Lee, 23 So. 3d 528 (Miss. Ct. App. 2009).

In a will-contest action, even if the matter were properly before the appellate court, the girlfriend of the decedent's motion for sanctions and attorney fees was waived since she filed no notice of appeal for her "counter-appeal" as required by Miss. R. App. P. 4(a). Moreover, once the chancellor held the matter in abeyance, the record did not reflect that the girlfriend raised the motion for sanctions again until her appellate brief and she did not file her notice of appeal until 28 days after entry of the final judgment; at any time in the interim, the girlfriend could have requested a ruling on her motion for sanctions, but she failed to do so. Frazier v. Loew (In re Caspelich), 22 So. 3d 1199 (Miss. Ct. App. 2009).

In a divorce case, a former husband's appeal was time-barred because it was not perfected within 10 days of a final judgment entered in January 2007; the husband's post-trial motions were untimely under Miss. R. Civ. P. 52 and Miss. R. Civ. P. 59, and a chancellor did not have the authority to extend the time for such. The January 2007 judgment was final because it attended to all of the issues before the chancellor, including the support of two minor children, the equitable distribution of marital assets and liabilities, whether to award a former wife alimony, and whether to award the former wife attorney's fees. Anderson v. Anderson, 8 So. 3d 264 (Miss. Ct. App. 2009).

Buyer's appeal was dismissed where, had the buyer's motion for a new trial pursuant to Miss. R. Civ. P. 59 been timely filed, then under Miss. R. App. P. 4(d), his appeal would have been timely filed; however, since the buyer's Rule 59 motion was untimely, the appellate court lacked jurisdiction in the matter. Gober v. Lee, 8 So. 3d 912 (Miss. Ct. App. 2009).

A county court lacked jurisdiction to consider an inmate's motion for an out-of-time appeal because the inmate's claim was outside the 180-day limitation period set forth in Miss. R. App. P. 4; furthermore, the inmate failed to demonstrate any reason why the court should suspend the rules to consider his claim. Edmond v. State, 991 So. 2d 588 (Miss. 2008), writ of certiorari dismissed by 558 U.S. 806, 130 S. Ct. 230, 175 L. Ed. 2d 10, 2009 U.S. LEXIS 6976, 78 U.S.L.W. 3182 (2009).

Where the appellate brief of defendant, a pro se prisoner, was filed outside of the 30-day window provided in Miss. R. App. R. 4(a) but where the brief was dated well within the 30-day window, the State's motion to dismiss the appeal for lack of jurisdiction was denied because the State failed to meet its burden of proof to establish that defendant's notice of appeal was untimely filed in failing to establish when defendant actually delivered his appellate documents to prison authorities for mailing. Carroll v. State, 3 So. 3d 767 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 97 (Miss. 2009).

Judgment of an appellate court, which overturned a verdict in favor of a driver in a negligence action, was reversed, the case was dismissed, and the judgment of the trial court was reinstated where a passenger's notice of appeal was not timely filed under Miss. R. App. P. 4(a); the passenger failed to seek a writ of mandamus following the trial court's delay in ruling on the passenger's post-judgment motions. Busby v. Anderson, 978 So. 2d 637 (Miss. 2008).

Appeal was untimely with regard to an order of contempt that a court had entered almost a year before the appeal was filed. Diaz v. Bounds, 989 So. 2d 953 (Miss. Ct. App. 2008), writ of certiorari denied en banc by 993 So. 2d 832, 2008 Miss. LEXIS 416 (Miss. 2008).

In students' lawsuit centered around the prospect of "educational malpractice," a college's appeal of the denial of its motion to compel arbitration was timely and properly before the appellate court, because both of its notices of appeal were filed within 30 days of the circuit court's order denying its motion. Va. College, LLC v. Moore, 974 So. 2d 269 (Miss. Ct. App. 2008).

Under Miss. R. App. P. 4(h), the trial court did not err in finding that the inmate's motion for an out-of-time appeal was untimely; the inmate had timely notice of the disposition of his post-conviction relief motions, his motion was mistitled and failed to mention a timely appeal, and at the time that motion was denied, he still had time to file a notice of appeal, but did not seek relief until one year later. Shelton v. State, 984 So. 2d 320 (Miss. Ct. App. 2007), writ of certiorari denied by 984 So. 2d 277, 2008 Miss. LEXIS 296 (Miss. 2008).

Father's post-trial motion was made 42 days after entry of a youth court's May 19, 2005, judgment terminating his parental rights, so Miss. R. App. P. 4(d) did not operate to toll the beginning of the 30-day time limitation prescribed by Rule 4(a), and his notice of appeal was filed approximately 113 days after the entry of judgment, well outside the 60-day window. Even if it was presumed that the father sought and obtained an extension of time pursuant to Rule 4(g), the notice of appeal was filed more than 10 days after the order entered nunc pro tunc on August 11, 2005, and even if the failure to learn of the entry of judgment constituted "excusable neglect," the notice of appeal was still untimely because it was filed beyond the maximum additional time allowed by Rule 4(g), and finally, the notice of appeal was filed more than 14 days after the August 11 entry of the relevant order allowing him additional time to file his notice of appeal making it untimely pursuant to Rule 4(h). In re A.M.A., 986 So. 2d 999 (Miss. Ct. App. 2007), writ of certiorari denied by 987 So. 2d 451, 2008 Miss. LEXIS 378 (Miss. 2008), writ of certiorari denied by 2008 Miss. LEXIS 374 (Miss. July 31, 2008).

Appellate court had no jurisdiction to consider an appeal by parties who filed a motion to reopen the time for appeal approximately 14 days after receiving notice of the decree being appealed from, because under Miss. R. App. P. 4(h), the motion should have been filed within seven days of receiving the notice. Moore v. Wilson, 966 So. 2d 853 (Miss. Ct. App. 2007).

Given that defendant's notice of appeal occurred more than 30 days after the date of entry of the judgment or order appealed from, Miss. R. App. P. 4(a), defendant's appeal was procedurally barred. Lett v. State, 965 So. 2d 1066 (Miss. 2007).

Pursuant to Miss. R. App. P. 2(a)(1), defendant's appeal of the denial of postconviction relief was dismissed for failure to timely file the appeal; the appeal was filed 67 days after the trial court denied the motion for post-conviction relief, well beyond the 30 days required by Miss. R. App. P. 4(a). Craft v. State, 966 So. 2d 856 (Miss. Ct. App. 2007).

Appellate court lacked jurisdiction to hear an appeal from an order denying a motion to reconsider summary judgment because the order was not appealed within 30 days of its entry, notwithstanding that a circuit court clerk had failed to notify the parties of the order as required by Miss. R. Civ. P. 77(d). Payne v. Magnolia Healthcare, Inc., 984 So. 2d 290 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2008 Miss. LEXIS 291 (Miss. June 12, 2008).

Where an arrestee filed two actions against a bonding company, two agents, and a surety arising from the revocation of a bail bond, res judicata barred an attempt to revive the first action filed where the second action, which raised identical issues, had been dismissed, and no appeal was filed under the time in Miss. R. App. P. 4. Stringer v. Am. Bankers Ins. Co. of Fla., 969 So. 2d 113 (Miss. Ct. App. 2007), writ of certiorari dismissed by 552 U.S. 1306, 128 S. Ct. 1925, 170 L. Ed. 2d 741, 2008 U.S. LEXIS 3407, 76 U.S.L.W. 3556 (2008).

Even though a notice of appeal was untimely in a case involving a motion for post-conviction relief, an appellate court chose to proceed with hearing the merits of such, due to the unique circumstances of the case. Jefferson v. State, 958 So. 2d 1276 (Miss. Ct. App. 2007).

Dismissal of the inmate's petition for postconviction relief was proper because the appeal was untimely under Miss. R. App. P. 4(a) since he had 30 days from the entry of the order in which to file his appeal and 30 days hadexpired with respect to both motions for postconviction relief well before the inmate filed his notice of appeal. Doss v. State, 956 So. 2d 1100 (Miss. Ct. App. 2007).

Where defendant's conviction of misdemeanor driving under the influence of intoxicating liquor was affirmed on January 16, 2003, his motion for reconsideration and/or out of time appeal filed on December, 3, 2003 was untimely. The interests of justice did not favor allowing for an out-of-time appeal; defendant failed to prove his claim that he did not receive notice that his conviction was upheld. Havard v. State, 911 So. 2d 991 (Miss. Ct. App. 2005).

Pursuant to the time periods for filing an appeal under Miss. R. App. P. 4(a) and 26(a), a terminated department of corrections employee's appeal of the circuit court's upholding of his termination was filed late and, because the circuit court had not granted his motion for a late appeal, the Supreme Court of Mississippi was without jurisdiction over the instant appeal. Redmond v. Miss. Dep't of Corr., 910 So. 2d 1211 (Miss. Ct. App. 2005).

Where defendant did not file his notice of appeal within 30 days of the final judgment as required by Miss. R. App. P. 4(a), the appeal was dismissed for lack of jurisdiction. Tran v. State, 915 So. 2d 1129 (Miss. Ct. App. 2005).

Circuit court's granting of the individuals' motion to reopen the time for appeal was improper pursuant to Miss. R. App. P. 4(h), because the individuals filed their notice later than the required seven days. By failing to comply with the rule, the appellate court lacked the jurisdiction to consider the appeal. Penn v. State, 909 So. 2d 135 (Miss. Ct. App. 2005).

Where defendant attempted an appeal of an order denying his motion for postconviction relief, as the appeal was filed more than 30 days after entry of the order, it was untimely under Miss. R. App. 4(a), and was properly dismissed under Miss. R. App. 2(a)(1). Penn v. State, 909 So. 2d 135 (Miss. Ct. App. 2005).

After summary judgment was awarded to a home inspector in a homeowner's action for fraud and negligence, an appellate court lacked jurisdiction to address the issues raised in the appeal because the appeal was filed one day beyond the 30-day deadline in Miss. R. App. P. 4(a). Hodnett v. Anderson, 913 So. 2d 994 (Miss. Ct. App. 2005).

Employee met the 30 day requirement of Miss. R. App. P. 4 where the trial court denied his motion for relief on November 5, 2003, and the employee filed his notice of appeal on December 4, 2003, exactly 29 days later. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844 (Miss. 2005).

Under Miss. R. App. P. 4, using the language "shall," required a party to file a notice of appeal within 30 days, while Miss. R. App. P. 48B, using the language "may," permitted a party to seek review within 14 days; therefore, the employee's appeal was timely because it was filed in accordance with Miss. R. App. P. 4. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844 (Miss. 2005).

Because defendants provided a specific factual denial of receipt of the notice of the circuit court's opinion and order or judgment by submitting affidavits of a legal secretary and a legal assistant that stated the notice had not been received, they rebutted and destroyed the presumption of notice; additionally, plaintiffs did not offer proof by means of affidavits or otherwise from the circuit court clerk's office showing that notice was in fact sent and/or received. Thus, the circuit court abused its discretion in denying the motion to reopen the time for appeal. Prepaid Legal Servs. v. Taylor, 904 So. 2d 1059 (Miss. 2004).

Court had jurisdiction, pursuant to Miss. R. App. P. 4(d), to hear a credit card company's appeal of the denial of its motion to alter or reconsider a default judgment and damages that was entered against it in plaintiffs' breach of contract action because the company filed its notice of appeal within 30 days of the denial of the motion to alter or reconsider. Capital One Servs. v. Rawls, 904 So. 2d 1010 (Miss. 2004).

Where defendant was not at fault for failing to file a formal notice of appeal from his conviction, and no in-court waiver of appeal had been made, the Supreme Court exercised its discretion, in the interests of justice, to allow defendant to file untimely appeal. DeLoach v. State, 890 So. 2d 852 (Miss. 2004).

Circuit court lost jurisdiction over an employee's action seeking judicial review of a decision by the Mississippi Workers' Compensation Commission that denied her claim for workers' compensation benefits when the employee failed to file a timely appeal from the same court's order, which affirmed the Commission's decision; the circuit court erred in vacating its own order and replacing it with a new and contrary order. Univ. of S. Miss. v. Gillis, 872 So. 2d 60 (Miss. Ct. App. 2003), writ of certiorari denied by 873 So. 2d 1032, 2004 Miss. LEXIS 479 (Miss. 2004).

Where an inmate did not file an appeal of judgment dismissing his motion for postconviction relief until 11 months after the judgment, under Miss. R. App. P. 4(a) his appeal from the judgment was untimely, and the appellate court has no jurisdiction to address the appeal. Torns v. State, 866 So. 2d 486 (Miss. Ct. App. 2003).

Lack of notice of the entry by the clerk did not affect the time to appeal, nor relieve or authorize the court to relieve a party for failure to appeal within the time allowed. Smith v. Parkerson Lumber, Inc., 890 So. 2d 832 (Miss. 2003), remanded by 2004 Miss. App. LEXIS 326 (Miss. Ct. App. Apr. 20, 2004).

Appellate court held that as the mother filed her motion to reopen the time for appeal within seven days as specified in Miss. R. App. P. 4(h), and the father was not prejudiced by reopening the time for appeal, the trial court abused its discretion in denying the mother's motion. Horowitz v. Parker, 852 So. 2d 686 (Miss. Ct. App. 2003), remanded by 2003 Miss. App. LEXIS 807 (Miss. Ct. App. Aug. 17, 2003).

Appellate court had to dismiss defendant's appeal of his conviction for burglary of a commercial building, as his failure to file a timely notice of appeal within 30 days of the date the trial court denied his post-trial motions meant the appellate court lacked jurisdiction to hear his appeal. Franklin v. State, 853 So. 2d 158 (Miss. Ct. App. 2003).

In a workers' compensation case, the claimant was notified of the November entry of judgment seven weeks after such entry, which exceeded the 21 days as stated in Miss. R. App. P. 4(h), the claimant filed the motion to allow an out-of-time appeal the day after receiving the order, and neither party could show prejudice as a result of the out-of-time appeal; thus, the trial court properly granted the claimant's out-of-time appeal in allowing the claimant 14 days to file the claimant's notice of appeal, which the claimant timely did. Twine v. City of Gulfport, 833 So. 2d 596 (Miss. Ct. App. 2002).

Where defendant did not appeal the sentence imposed following his guilty plea within 30 days of the entry of the order and did not move within 180 days of the order to reopen the appeal, defendant's appeal was procedurally barred, and defendant's proper remedy was postconviction relief. Watson v. State, 841 So. 2d 218 (Miss. Ct. App. 2003).

Upon denial or dismissal of post-conviction claims, the notice of appeal required by Miss. R. App. P. 3 must be filed within 30 days after the date of entry of the judgment or order appealed from pursuant to Miss. R. App. P. 4(a) and Miss. Code Ann. § 99-39-25; therefore in order to perfect an appeal from the denial of post-conviction relief, there must be a final judgment or order and the appeal must fall within 30 days after its entry. Scott v. State, 817 So. 2d 642 (Miss. Ct. App. 2002).

Appellate court dismissed defendant's appeal of alleged denial of defendant's petition for post-conviction relief as no final order was ever entered by the trial court and, absent such an order, the appellate court lacked jurisdiction to consider the appeal. Scott v. State, 817 So. 2d 642 (Miss. Ct. App. 2002).

Patient's appeal in a medical malpractice case against one of two doctors was not time-barred where the trial court granted summary judgment to the doctor, the patient's appeal of the grant of summary judgment to the doctor was dismissed for failure to obtain certification under Miss. R. Civ. P. 54, and summary judgment was granted to the other doctor because the patient filed her motion for appeal against the doctor within 30 days of the entry of a final judgment by the trial court. Gilchrist v. Veach, 807 So. 2d 485 (Miss. Ct. App. 2002).

The requirements of subsection (h) are obligatory rather than permissive; timely notice of appeal is jurisdictional, and the court lacks jurisdiction to address an appeal where the appellant has not given proper notice. Curry v. B. C. Rogers Poultry, Inc., 797 So. 2d 265 (Miss. Ct. App. 2001).

An appeal filed prior to the disposition of a motion under Miss. R. Civ. P. 59 is not a nullity and, therefore, in the absence of any prejudice to the appellees, the court refused to dismiss an appeal that was taken prematurely before the disposition of such a motion. Mallery v. Taylor, 792 So. 2d 226 (Miss. 2001).

The trial court erred in failing to grant the appellant's motion to reopen time for appeal where (1) the first notice that the appellant received that a final judgment had been entered occurred on or about October 1, 1999, when the appellee filed a motion to dismiss with the appellate court, (2) on October 6, 1999, the appellant timely filed his motion to reopen time for appeal, and (3) the appellee failed to argue that she was in any way prejudiced. Duncan v. Duncan, 774 So. 2d 418 (Miss. 2000).

Two requirements must be met before the time for appeal may be reopened: (1) that a party entitled to receive notice fails to receive such notice from the clerk or any party within 21 days of its entry; and (2) that no party would be prejudiced, with prejudice defined as some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal; once these are established, a motion must be filed within 180 days of entry of the judgment or within 7 days of receipt of such notice, whichever is earlier. Duncan v. Duncan, 774 So. 2d 418 (Miss. 2000).

The party seeking an out-of-time appeal carries the burden of persuasion regarding the lack of a timely notice; there must be a specific factual denial of receipt of notice to rebut and terminate the presumption that notice was mailed and received. Denton v. State, 762 So. 2d 814 (Miss. Ct. App. 2000).

Where a notice of appeal under this rule was filed within the deadline for filing a petition requesting an interlocutory appeal under Rule 5, suspending the rules did not constitute an improper extension of the time for taking an interlocutory appeal and, instead, only waived the intricate procedural obligations on the party seeking such an appeal. Hobgood v. Koch Pipeline Southeast, Inc., 769 So. 2d 838 (Miss. Ct. App. 2000), writ of certiorari denied by 531 U.S. 1073, 121 S. Ct. 766, 148 L. Ed. 2d 666, 2001 U.S. LEXIS 174, 69 U.S.L.W. 3456 (2001).

Illustrative cases.

Time for the appeal of the order denying reconsideration began to run on September 26, 2016, yet appellant did not file her petition for interlocutory appeal until February 15, 2017, well past the 21-day deadline; as for her appeal of the motion for reconsideration under Miss. R. App. P. 4, it too was untimely, and both appeals were dismissed. Tillman v. Ditech Fin. LLC, 253 So. 3d 293 (Miss. 2018).

Appellant filed his notice of appeal within 30 days of the order denying his motion to alter or amend, but more than 60 days after entry of the underlying order; given case law from the Mississippi Supreme Court, the court had jurisdiction to address the appeal and the merits of the underlying order compelling arbitration. Massey v. Oasis Health & Rehab of Yazoo City, 269 So. 3d 1242 (Miss. Ct. App. 2018).

Plain language of subsection (d) and the comments established that a notice of appeal filed by a customer's mother was "suspended" until the trial court ruled on the customer's post-trial motion, regardless of whether the motion actually was pending at the time the mother filed, and thus, the trial court did not lose jurisdiction to rule on it. Roberts Co. v. Moore, 214 So. 3d 202 (Miss. 2017).

Because appellants voluntarily dismissed their appeal from a trial court's Miss. R. Civ. P. 54(b) final judgment after the expiration of the thirty day period for an appeal, their subsequent arguments that their jury trial waiver was ineffective, that the trial court's Rule 54(b) certification was erroneous, and that the trial court erroneously denied a motion to intervene were not properly before the appellate court as they were untimely filed.

Rolison v. Fryar, 204 So. 3d 725 (Miss. 2016).

Driver's appeal of an entry of default was properly before the supreme court because after the trial court entered the default judgment, the driver timely filed his notice of appeal from the trial court's subsequent entry of a Miss. R. Civ. P. 54(b) final judgment respecting fewer than all of the claims and fewer than all of the parties. Tucker v. Williams, 198 So. 3d 299 (Miss. 2016).

Defendant's notice of appeal was timely filed on August 22 because before the judgment of conviction and sentence was entered on June 11, defendant's trial attorney filed a motion for a new trial on April 29. Because the jury returned its guilty verdict on March 6 and defendant was verbally sentenced on April 18, the motion was timely as the time for appeal began to run when the trial court entered its order denying defendant's motion for a new trial or, in the alternative, a JNOV on August 8. Sims v. State, 196 So. 3d 180 (Miss. Ct. App. 2016).

To the extent that defendant's arguments attacked the circuit court's dismissal of defendant's appeal, the appellate court declined to address those arguments because defendant failed to timely appeal the dismissal. Moreover, the circuit court possessed no jurisdiction to grant defendant's requested relief, and defendant's untimely motion after imposition of the judgment of the municipal court was moot. Keogh v. State, 179 So. 3d 1151 (Miss. Ct. App. 2015), writ of certiorari denied by 179 So. 3d 1137, 2015 Miss. LEXIS 579 (Miss. Dec. 3, 2015).

Because the administratrix for a decedent's estate did not and could not argue that the administratrix did not receive notice of an order dismissing a hospital or an order dismissing doctors from the administratrix's medical malpractice action, the trial court did not have the authority to reopen the time for an appeal. Pope v. Brock, 179 So. 3d 1120 (Miss. 2015).

Because it was not unlikely that defendant's notice of appeal was delivered to prison authorities within the time frame allowed by Miss. R. App. P. 4(a), the appellate court exercised its discretion under Miss. R. App. P. 2(c) to suspend the thirty-day filing requirement to the extent defendant's filing may have been untimely. Small v. State, 141 So. 3d 61 (Miss. Ct. App. 2014).

Ex-husband's notice of appeal was timely because his time in which to file a notice of appeal did not begin until the chancellor denied his motion to alter and amend; the ex-husband's motion to alter and amend was timely because it was filed not later than ten days after entry of the judgment. J.S.W. v. A.W.R. (In the Interest of V.D.W.), 152 So. 3d 336 (Miss. Ct. App. 2013), reversed by 152 So. 3d 306, 2014 Miss. LEXIS 593 (Miss. Dec. 11, 2014).

Appellate court exercised its discretion under Miss. R. App. P. 2(c) to allow an inmate's late appeal of the denial of his motion to reconsider the dismissal of his post-conviction relief petition where the notice of appeal was received only one day late, and the documents could have been delivered to prison authorities within the 30-day time frame of Miss. R. App. P. 4(a). Campbell v. State, 126 So. 3d 61 (Miss. Ct. App. 2013), writ of certiorari denied by 125 So. 3d 658, 2013 Miss. LEXIS 609 (Miss. Nov. 21, 2013).

Because a county, claiming sovereign immunity, filed a notice of appeal of right pursuant to Miss. R. App. P. 4 instead of a petition for an interlocutory appeal under Miss. R. App. P. 5, and because the Supreme Court of Mississippi declined to adopt the federal "collateral order" doctrine, the county's appeal was unreviewable. Hinds County v. Perkins, 64 So. 3d 982 (Miss. June 30, 2011).

Whether a trial court erred in denying a defendant's motion to designate his motion for a reduction of sentence as a motion for post-conviction relief was not properly before the court of appeals because although defendant raised the issue in his brief, no notice of appeal was given on the issue. Seal v. State, 38 So. 3d 635 (Miss. Ct. App. 2010).

While the agent argued that the circuit court's order was not a final judgment which expressly dismissed the claims with prejudice under Miss. R. Civ. P. 54(b), the order clearly used words of finality and adjudication; the order concluded that the agent could not maintain the cause of action against the insurers and twice included the phrase "ordered and adjudged. Because the circuit court's opinion and order was final and appealable and agent's notice of appeal was untimely filed and she failed to file a motion for an extension of time under Miss. R. App. P. 4(g), ther appeal was dismissed for lack of jurisdiction. Rigdon v. Miss. Farm Bureau Fed'n, 22 So. 3d 321 (Miss. Ct. App. 2009).

Where appellant failed to timely file her appeal of a child custody order with the clerk of the trial court within thirty days from the entry of judgment as required by Miss. R. App. P. 4(a), the appellate court lacked jurisdiction to hear the appeal. Dudley v. Harris, 979 So. 2d 692 (Miss. Ct. App. 2008).

In a case where partial summary judgment was granted to a utility company on the issue of trespass damages, an appeal from the ruling was dismissed because the trial court improperly entered a Miss. R. Civ. P. 54(b) final judgment since the litigation was not complex, and the appeal would have resulted in piecemeal litigation; moreover, the case was not an appropriate example of an interlocutory appeal either since it did not involve merely questions of law. Byrd v. Miss. Power Co., 943 So. 2d 108 (Miss. Ct. App. 2006).

Suspension of Miss. R. App. 4(a) was appropriate pursuant to Miss. R. App. P 2(c) because it was clearly not defendant's fault that his appeal was untimely; his counsel inadvertently failed to file defendant's motion for a new trial as well as the notice of appeal. McFarland v. State, 936 So. 2d 960 (Miss. Ct. App. 2006).

Husband's appeal of a divorce was subject to dismissal for failure to file a proper and timely notice of appeal. Harvey v. Harvey, 918 So. 2d 837 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 1279, 2006 Miss. LEXIS 23 (Miss. 2006).

Jurisdiction was appropriate in an action involving contempt and the modification of child support because Miss. R. App. P. 4(d) provides that while a notice of appeal filed before disposition of specified post-trial motions was ineffective pending disposition of said motions, the notice ripened into an effective appeal upon disposition of the post-trial motions. Howard v. Howard, 913 So. 2d 1030 (Miss. Ct. App. 2005), remanded by 968 So. 2d 961, 2007 Miss. App. LEXIS 760 (Miss. Ct. App. 2007).

Defendant's appeal of his conviction of armed robbery was dismissed because defendant's notice of appeal was neither filed within the time limits set forth in Miss. R. App. P. 4 or within the time allowed by the trial court to file an out-of-time appeal. DeLoach v. State, 856 So. 2d 388 (Miss. Ct. App. 2003), reversed by, remanded by 890 So. 2d 852, 2004 Miss. LEXIS 497 (Miss. 2004).

A motion for reconsideration was in essence a motion to alter or amend a judgment under Miss. R. Civ. P. 59(e) and the time for filing notice of appeal in an action for property damage due to pollution was tolled until the plaintiff landowners had notice of the trial court's denial of their motion for reconsideration; the trial court therefore abused its discretion in denying the landowners' motion to reopen appeal filed four days after the landowners became aware of the denial of their motion for reconsideration of a grant of summary judment. Boyles v. Schlumberger Tech. Corp., 792 So. 2d 262 (Miss. 2001).

Where a motion for reconsideration was not filed until 11 days after the entry of the order at issue, the motion was untimely and did not suspend the running of the 30 days provided by the rule for the filing of a notice of appeal and, therefore, the notice of appeal filed after the denial of the motion for reconsideration was untimely. Hill ex rel. Heirs of McClaurin v. McLaurin, 769 So. 2d 257 (Miss. Ct. App. 2000).

Appeal was timely, where appellant gave notice of appeal to both final order and previous interlocutory order, and his notice of appeal was perfected within thirty days from date of entry of final order. O'Neill v. O'Neill, 551 So. 2d 228 (Miss. 1989).

There was no entry of final judgment where there was no stamp, notation or other marking or anything else to indicate that judgment was ever delivered to clerk of court for filing, and appeal could not proceed until clerk corrected the clerical oversight. Sweet v. Luster, 492 So. 2d 983 (Miss. 1986).

RESEARCH REFERENCES

ALR. Application of "fugitive disentitlement doctrine" to civil matters — State cases. 112 A.L.R.5th 399.

Propriety and Sufficiency of Electronic Filing of Notice of Appeal in State Actions. 70 A.L.R.6th 661.

Rule 5. Interlocutory appeal by permission.

(a) *Petition for permission to appeal.* An appeal from an interlocutory order may be sought if a substantial basis exists for a difference of opinion on a question of law as to which appellate resolution may:

(1) Materially advance the termination of the litigation and avoid exceptional expense to the parties; or

(2) Protect a party from substantial and irreparable injury; or

(3) Resolve an issue of general importance in the administration of justice.

Appeal from such an order may be sought by filing a petition for permission to appeal with the clerk of the Supreme Court within 21 days after the entry of such order in the trial court with proof of service on the trial judge and all other parties to the action in the trial court.

(b) *Content of petition; answer.* The petition shall contain: a statement of the facts necessary to an understanding of the question of law determined by the order of the trial court; a statement of the question itself; a statement of the current status of the case; and a statement as to why the petition for interlocutory appeal is timely. The petition shall further identify all other cases or petitions for interlocutory appeal pending before the appellate court and known to the petitioner which are related to the matter for which interlocutory review is sought. The petition shall include or have annexed a copy of the order from which appeal is sought and of any related findings of fact, conclusions of law or opinion. Within 14 days after service of the petition, the trial judge may file a statement informing the appellate court of any reasons why that judge believes that the petition should or should not be granted, and any adverse party may file an answer in opposition with the clerk of the Supreme Court, with proof of service on the trial judge and all other parties to the action in the trial court. The petition with any statement by the trial judge and answers of all parties responding shall be submitted without oral argument unless otherwise ordered.

(c) *Form of papers; number of copies.* Four (4) copies of the petition and answer, if any, shall be filed with the original, but the Court may require that additional copies be furnished. The provisions of Rule 27 concerning motions shall govern the filing and consideration of the petition and answer, except that no petition or answer, including its supporting brief, shall exceed 15 pages in length.

(d) *Grant of permission; prepayment of costs; filing of record.* If permission to appeal is granted by the Supreme Court, the appellant shall pay the docket fee as required by Rule 3(e) within 14 days after entry of the order granting permission to appeal, and the record on appeal shall be transmitted and filed and the appeal docketed in accordance with Rules 10, 11, and 13. The time fixed by those rules for transmitting the record and docketing the appeal shall run from the date of entry of the order granting permission to appeal. A notice of appeal need not be filed.

(e) *Expedited proceedings.* The Court may in its discretion expedite the appeal and give it preference over ordinary civil cases. If the Court determines that the issues presented can be fairly decided on the petition, response and exhibits presented, the Court may decide those issues simultaneously with the granting of the petition, without awaiting preparation of a record or further briefing.

(f) *Effect on trial court proceedings.* The petition for appeal shall not stay proceedings in the trial court unless the trial judge or the Supreme Court shall so order. (Amended effective July 29, 2004 to add paragraph (e) regarding expedited proceedings when the petition is granted. Effective December 9, 2004, as to trial court orders entered from and after March 1, 2005, paragraph (a) and (b) are amended to eliminate provision for seeking certification of the issue by the trial judge and provide the trial judge an opportunity to file a statement regarding the issue.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective April 15, 2004, the Comment was amended to note that Rule 5 does not alter the applicability of Miss. Code Ann. § 99-35-103 (Rev. 2000) regarding appeals by the government in criminal cases.

Effective December 28, 1995, Rule 28(m) and a new final paragraph to the Comment were added to encourage the filing of disk copies of briefs. 663-667 So.2d XXVII (West Miss.Cases 1995).

Effective January 1, 1995, Miss.R.App.P. 5 replaced Miss.Sup.Ct.R. 5, 644-647 So.2d XXX-XXXIII (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 5 was amended to delete a reference to a repealed statute. 632-635 So.2d LI (West Miss.Cases 1994).

COMMENT

This rule is a composite of Fed. R. App. P. 5, 28 U.S.C. § 1292(b) and American Bar Ass'n. *Standards Relating to Appellate Courts* § 3.12 (1977). *See also*, Ala. R. App. P. 5; Comment, 88 Harv. L. Rev. 607 (1975). It provides for interlocutory appeal from Circuit, Chancery and County Courts. *See Sonford Products Corp. v. Freels*, 495 So. 2d 468, 471 (Miss. 1986); *Kilgore v. Barnes*, 490 So. 2d 895, 896 (Miss. 1986); *Southern Farm Bureau Cas. Ins. v. Holland*, 469 So. 2d 55, 62-64 (Miss. 1985) (Anderson, J., concurring). It applies to both civil and criminal cases. *Cf. State v. Caldwell*, 492 So. 2d 575, 576-577 (Miss. 1986) (remedial writ granted where constitutional rights violated prior to criminal trial).

Prior to March 1, 2005, Rule 5(a) required the petitioner to seek certification for an interlocutory appeal first from the trial court. Denial of certification did not limit the right of the petitioner to seek interlocutory review, but submitting the matter to the trial judge was a prerequisite to proceeding in the Supreme Court. This requirement has been eliminated by the amendment as to trial court orders entered from and after March 1, 2005. Under the rule prior to the amendment, the 14 day time limit ran from the time of entry of the judge's order ruling on a motion to amend the order which was the subject of the petition. With the elimination of the requirement of trial court certification or denial of certification as to orders entered after March 1, 2005, the petition must be filed within 21 days following the entry of the order which the petitioner submits for interlocutory review. While an interlocutory appeal may be sought at any time, the timeliness of the petition decreases as trial approaches. The practice of seeking belated reconsideration of the trial court's ruling for the purpose or renewing the time allowed for seeking interlocutory review is condemned. The rule is unlike federal practice in which both courts must agree before an interlocutory appeal will be heard under 28 U.S.C. § 1292(b).

The March 1, 2005 amendment recognizes that the trial court's views as to whether interlocutory review should be granted are often helpful. The amendment requires that the petition be served on the trial judge and invites that judge's statement as to the reasons why the petition should or should not be granted.

The standards for granting interlocutory appeal are based on existing law. Appeal will not be permitted except to resolve a question of law, and this includes the application of law to fact. There must be a substantial basis for a difference of opinion with the trial court. *See* Fed. R. App. P. 5(b); 28 U.S.C. § 1292(b). A question of law need not control the entire case, but must be sufficiently important to the litigation to merit interlocutory appeal. In this latter respect, the rule departs from the standards set forth in § 1292(b) and adopts the language followed by other state courts. *See, e.g.*, Ill. Sup. Ct. R. 308. Rule 5 does not alter the applicability of Miss. Code Ann. § 99-35-103 (Rev. 2000) regarding appeals by the government in criminal cases. *State v. Hicks*, 806 So. 2d 261 (Miss. 2002).

Rule 5(a)(1) begins with the federal requirement that interlocutory review will be permitted when such review will "materially advance the termination of the litigation." *See* Fed. R. App. P. 5(b); 28 U.S.C. § 1292(b). It adds the requirement of the now-repealed Miss. Code Ann. § 11-51-7 (Supp. 1986) that the appellant must show that the appeal may avoid expense as well as delay.

Rule 5(a)(2) permits interlocutory appeal where review will protect a party from substantial and irreparable injury. This category would permit interlocutory review of rulings on injunctions and receivership matters allowed as of right under 28 U.S.C. § 1292(a)(1). It would continue present state practice of interlocutory review of chancery orders requiring money to be paid or the possession of property changed, but only if compliance with such an order threatened the opposite party with irreparable injury.

Rule 5(a)(3) provides the Court with flexible authority to grant interlocutory review in situations in which the pertinent interest is the administration of justice. The interest "is that of the proper administration of justice generally—for example, when an order involves a question of procedure that would likely become moot by the time final judgment was entered but should be authoritatively resolved for the purposes of future guidance of courts below." American Bar Ass'n, *Standards Relating to Appellate Courts* § 3.12, at 29. *See also* Wisc. Stat. Ann. § 809.50(c) (1986). By permitting review to resolve conflicts among trial courts in such cases, the rule promotes uniformity and fairness to litigants.

Rule 5(b) provides only for the petition and the answer. A reply to the answer is not permitted and will not be considered.

Rule 5(c) contemplates that the petition and answer will be treated as motions and so must be supported by a brief. In order to expedite judicial consideration, however, the total length of a petition and brief are limited to 15 pages, and a similar restriction applies to the answer and its supporting brief. This limitation does not include pages in exhibits required to be annexed to the petition.

Rule 5 review is separate from the interlocutory review available by certification under M.R.C.P. 54(b) when a final judgment is entered as to fewer than all parties or claims, and that available under Rule 9 governing release in criminal cases.

Rule 5(e) was added by amendment effective July 29, 2004, in recognition of the need for expedited disposition of interlocutory appeals. On occasions when the Court is presented in the petition with a pure question of law or otherwise has before it sufficient information to do so, the Court may in its discretion address and dispose of the issue presented simultaneously with the grant of permission to file the interlocutory appeal and without further record preparation or briefing.

[Comment amended effective April 15, 2004; amended effective July 29, 2004; amended effective December 9, 2004; Comment amended effective January 11, 2007; Comment amended effective July 1, 2008.]

JUDICIAL DECISIONS

Construction.
No appellate jurisdiction.
Time for appeal.
Illustrative cases.

Construction.

The rule does not, and legally cannot, grant a litigant the right to petition the Court of Appeals for an interlocutory appeal. McGriggs v. Montgomery, 710 So. 2d 886 (Ct. App. 1998).

The fact that court below has given certificate under subdivision (a) of this rule in no way precludes supreme court's de novo review of whether rule's criteria have been met, and whether application for interlocutory appeal should be granted. American Elec. v. Singarayar, 530 So. 2d 1319 (Miss. 1988).

No appellate jurisdiction.

Appellate court lacked jurisdiction over a wife's appeal because the judgment was not final or appealable where the trial court did not certify that it was an appealable judgment, the wife neither sought nor was granted permission to proceed with an interlocutory appeal, and the her motions for reconsideration of the judgment denying a divorce and to amend had not been resolved and remained pending in the trial court. Hoffman v. Hoffman, 200 So. 3d 465 (Miss. Ct. App. 2016).

Because the chancellor retained jurisdiction to supervise the reunification process and to revisit the case in six months for further review, its order and opinion did not constitute a final, appealable judgment, and thus, the order was, not appropriate for consideration on direct appeal; the order left open for consideration in the chancery court the issues of custody and visitation. Wigington v. McCalop, 191 So. 3d 124 (Miss. 2016).

Appellate court did not have the authority to consider defendant's double jeopardy appeal because he failed to comply with the appellate rule for interlocutory appeals by seeking permission to appeal from the Supreme Court of Mississippi. Terrell v. State, 160 So. 3d 213 (Miss. 2015).

Appellate court lacked jurisdiction to hear an appeal because a chancellor's interim judgment was interlocutory in nature and not a final, appealable judgment where the language in the interim judgment that it was a final judgment had been scratched out and initialed by the chancellor, the chancellor had apparently not ruled on a pending issue regarding attorneys' fees, and there was no final judgment certification. Lewis v. Harvey (In re Estate of Lewis), 135 So. 3d 202 (Miss. Ct. App. 2014).

Appellate court lacked jurisdiction to consider the merits of a case because a chancellor's order—that the purported heirs' claims for establishment as children of their putative deceased father were barred by Miss. Code § 91-1-15—was not certified, did not include all parties, was amended after the appeal was filed, and the purported heirs neither sought nor received permission to proceed with an interlocutory appeal. Young v. Pollion (In re Gardner), 126 So. 3d 95 (Miss. Ct. App. 2013).

Owner's appeal was dismissed for lack of jurisdiction because his personal injury complaint alleged multiple claims against three parties, the circuit court's grant of summary judgment to an inspector lacked a final judgment certification, and there was no evidence the Mississippi Supreme Court granted permission to appeal an interlocutory order. Clausell v. Bourque, 122 So. 3d 825 (Miss. Ct. App. 2013).

Chancellor's order that found father in contempt for failing to pay child support but did not determine the amount of the arrearage or the amount of future child support the father would be obligated to pay was not a final order and as the mother failed to obtain permission to appeal, the appellate court lacked jurisdiction to consider the mother's appeal. Maurer v. Boyd, 111 So. 3d 690 (Miss. Ct. App. 2013).

Time for appeal.

In an interlocutory appeal from a decision denying a motorist's motion to dismiss a personal injury suit, the motorist's request for review was timely because it was filed exactly 14 days after the trial court denied certification. Bennett v. McCaffrey, 937 So. 2d 11 (Miss. 2006).

Interlocutory appeals were not an automatic right and permission must be granted by the supreme court. The appellate court was unable to say with certainty that counsel's alleged advice to the inmate was wrong but regardless, the inmate admitted that he was aware he could have appealed a decision in a final appeal and he failed to show why the timing of the appeal affected his desire to plead guilty. Jones v. State, 922 So. 2d 31 (Miss. Ct. App. 2006).

Where a notice of appeal under Rule 4 was filed within the deadline for filing a petition requesting an interlocutory appeal under this rule, suspending the rules did not constitute an improper extension of the time for taking an interlocutory appeal and, instead, only waived the intricate procedural obligations on the party seeking such an appeal. Hobgood v. Koch Pipeline Southeast, Inc., 769 So. 2d 838 (Miss. Ct. App. 2000), writ of certiorari denied by 531 U.S. 1073, 121 S. Ct. 766, 148 L. Ed. 2d 666, 2001 U.S. LEXIS 174, 69 U.S.L.W. 3456 (2001).

Illustrative cases.

Time for the appeal of the order denying reconsideration began to run on September 26, 2016, yet appellant did not file her petition for interlocutory appeal until February 15, 2017, well past the 21-day deadline; as for her appeal of the motion for reconsideration under Miss. R. App. P. 4, it too was untimely, and both appeals were dismissed. Tillman v. Ditech Fin. LLC, 253 So. 3d 293 (Miss. 2018).

Medical center's appeal of an order denying its motion for summary judgment on medical negligence claims did not violate the statute; Miss. Unif. Cir. & Cty. R. 4.06 (now Miss. Unif. Cir. & Cty. R. 4.05) and Miss. R. App. P. 5 conflict with § 11-51-79 regarding interlocutory appeals, and the court's rules trump statutory law. Jackson HMA, LLC v. Harris, 242 So. 3d 1 (Miss. 2018).

Driver's appeal of an entry of default was properly before the supreme court because after the trial court entered the default judgment, the driver timely filed his notice of appeal from the trial court's subsequent entry of a Miss. R. Civ. P. 54(b) final judgment respecting fewer than all of the claims and fewer than all of the parties. Tucker v. Williams, 198 So. 3d 299 (Miss. 2016).

Mother's appeal had to be dismissed because the father's petition for modification of visitation and custody had not been ruled on by the chancery court, the mother had not requested permission to file an interlocutory appeal, and there was nothing in the judgment or record to indicate that the chancery court intended to grant a final, appealable judgment or issued a certification that the judgment was final. McBride v. McBride, 169 So. 3d 942 (Miss. Ct. App. 2014).

Because appellant neither sought, nor obtained permission to appeal a chancellor's interlocutory order, and because the issue of attorney's fees remained pending before the chancellor, the intermediate appellate court had to dismiss the appeal for lack of jurisdiction and remand the case for determination of the remaining issues between the parties. Newson v. Newson, 138 So. 3d 275 (Miss. Ct. App. 2014).

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run; because the purchaser's circuit court judgment was not the underlying proceeding, it was not stayed by the order granting interlocutory appeal. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032 (Miss. 2014).

Because a county, claiming sovereign immunity, filed a notice of appeal of right pursuant to Miss. R. App. P. 4 instead of a petition for an interlocutory appeal under Miss. R. App. P. 5, and because the Supreme Court of Mississippi declined to adopt the federal "collateral order" doctrine, the county's appeal was unreviewable. Hinds County v. Perkins, 64 So. 3d 982 (Miss. June 30, 2011).

Because a summary judgment was not certified as final under Miss. R. Civ. P. 54(b), and because a tenant neither sought nor was afforded permission under Miss. R. App. P. 5 to proceed with an interlocutory appeal, the appellate court lacked jurisdiction to hear the tenant's appeal. Anderson v. Britton & Koontz Bank, N.A., 55 So. 3d 1130 (Miss. Ct. App. 2011).

pursuant to Miss. R. App. P. 5, an inmate was required to obtain the permission of the Clerk of the Mississippi Supreme Court in order to file an appeal of a circuit court's order staying his case against the Mississippi Department of Corrections because the appeal was interlocutory in nature, but no such permission was requested or granted. Taylor v. Petrie, 41 So. 3d 724 (Miss. Ct. App. 2010).

In a breach of contract case in which a Mississippi corporation filed an interlocutory appeal of a decision by the chancery court to transfer the case to the circuit court, the Mississippi Supreme Court was not prohibited from reversing that determination since no final judgment had been entered in the case. Derr Plantation, Inc. v. Swarek, 14 So. 3d 711 (Miss. 2009).

Appeal from a grant of summary judgment in favor of a painting subcontractor in a negligence action was properly dismissed because there was neither a Miss. R. Civ. P. 54(b) certification in the record with regard to the subcontractor, nor was there a petition for an interlocutory appeal under Miss. R. app. P. 5. Thus, the order was not appealable as a final judgment. Lloyd G. Oliphant & Sons Paint Co. v. Logan, 12 So. 3d 614 (Miss. Ct. App. 2009).

Appeal from the denial of a motion for summary judgment in a lease dispute was moot because a lessor did not file an interlocutory appeal under Miss. R. App. P. 5, and judgment was entered against him after a trial on the merits. Britton v. Am. Legion Post 58, 19 So. 3d 83 (Miss. Ct. App. 2008).

Where the buyer of a vehicle filed a multi-count complaint against the seller, only the breach of warranty claim was covered by the arbitration agreement and the circuit court denied the seller's motion to compel arbitration as to the remaining claims; a three-justice panel of the Mississippi Supreme Court granted the seller's petition for an interlocutory appeal pursuant to Miss. R. App. P. 5(a). Rogers-Dabbs Chevrolet-Hummer, Inc. v. Blakeney, 950 So. 2d 170 (Miss. 2007).

In a case where partial summary judgment was granted to a utility company on the issue of trespass damages, an appeal from the ruling was dismissed because the trial court improperly entered a Miss. R. Civ. P. 54(b) final judgment since the litigation was not complex, and the appeal would have resulted in piecemeal litigation; moreover, the case was not an appropriate example of an interlocutory appeal either since it did not involve merely questions of law. Byrd v. Miss. Power Co., 943 So. 2d 108 (Miss. Ct. App. 2006).

Personal representatives could not viably argue that the possibility that the law could change during the pendency of a petition by a convenience store for an interlocutory appeal would bar the use of an interlocutory appeal petition as a mechanism for seeking relief. Anderson v. R & D Foods, Inc., 913 So. 2d 394 (Miss. Ct. App. 2005).

Employee's claims for actual damages, and for attorney's fees remained pending, the trial court never made a Miss. R. Civ. P. 54(b) certification, the trial court's order dismissing the punitive damages claim was interlocutory, and the question presented did not compel suspension of the procedural requirements of Miss. R. App. P. 5(a) to allow an interlocutory appeal, thus, the appeal was dismissed for lack of an appealable final judgment. Millsaps v. Stout, 860 So. 2d 852 (Miss. Ct. App. 2003).

In an interlocutory appeal in a medical malpractice action, the court declined to address a contention by a hospital and three physicians that a trial court had erred in denying their motion to dismiss the action because the matter was not properly before the court, where the assignment of error was not included in the petition for interlocutory appeal. Wayne Gen. Hosp. v. Hayes, — So. 2d —, 2003

Miss. LEXIS 598 (Miss. Nov. 6, 2003), opinion withdrawn by 2004 Miss. LEXIS 298 (Miss. Mar. 25, 2004), opinion withdrawn by, substituted opinion at 868 So. 2d 997, 2004 Miss. LEXIS 289 (Miss. Mar. 25, 2004).

As the trial court failed to explain its basis for concluding why certain documents plaintiff sought in discovery were discoverable and others were not, the Supreme Court, which granted defendants' request for an interlocutory appeal of a discovery order, conducted a de novo review of the challenged items and found that they were protected by the attorney-client privilege and/or the work-product doctrine and that the crime-fraud exception was inapplicable. Hewes v. Langston, 848 So. 2d 800 (Miss. 2003), opinion withdrawn by, substituted opinion at, remanded by 853 So. 2d 1237, 2003 Miss. LEXIS 405 (Miss. 2003).

In an appeal from what was in effect, a partial summary judgment, which resolved the ownership of the disputed life insurance policy as being owned by the decedent, the ultimate issue of who was the proper beneficiary, the decedent's former husband, or the decedent's child, was apparently reserved, there was no showing to justify a certification, and therefore, the appeal was an improper interlocutory appeal, and was dismissed. Evans v. Moore, 853 So. 2d 850 (Miss. Ct. App. 2003).

As a trial judge heard sufficient evidence that the defendant's confessions were voluntary, he did not abuse his discretion in failing to grant defendant an interlocutory appeal on this issue. Jones v. State, 841 So. 2d 115 (Miss. 2003).

In a divorce case, the chancellor cured any error that might have occurred in the denial of the husband's motion to compel when the chancellor allowed the husband leniency in questioning the wife at trial; therefore, the chancellor's denial of the husband's motion to compel did not warrant an interlocutory appeal. Boutwell v. Boutwell, 829 So. 2d 1216 (Miss. 2002).

Petition for interlocutory appeal of discovery order was denied, where order required insurer to produce an investigative file and supreme court did not know content of file or nature of insurer's investigation, and objections to discovery of file's contents could be lodged with trial court on an item by item basis. Haynes v. Anderson, 597 So. 2d 615 (Miss. 1992).

Rule 6. Counsel on appeal in criminal cases and proceedings *in Forma Pauperis* in criminal cases .

(a) *Leave to proceed in forma pauperis from the trial court to the Supreme Court in criminal cases.*

(1) *Post-trial motion in trial court.* A defendant in a criminal case in a trial court who desires to proceed on appeal Court *in forma pauperis* shall file in the trial court a motion for leave so to proceed, together with an affidavit showing the defendant's inability to pay fees and costs. If the motion is granted, the defendant may so proceed without further application to the Supreme Court and without prepayment of fees or costs in either court. If the motion is denied, the trial court shall state in writing the reasons for the denial.

(2) *When in forma pauperis status previously granted by trial court.* Notwithstanding the provisions of Rule 6(a)(1), a party who has been permitted to proceed *in forma pauperis* in the trial court may proceed on appeal *in forma pauperis* without further authorization unless, before or after the notice of appeal is filed, the trial court shall certify that the party is no longer indigent and is not otherwise entitled to proceed *in forma pauperis*. The court shall state in writing the reasons for such certification or finding. Where an appeal is taken to the Supreme Court *in forma pauperis*, the certification of compli-

ance required by Rule 11(b)(1) shall indicate that the appeal is taken *in forma pauperis*.

(3) *Motion in the Supreme Court.* If a motion for leave to proceed on appeal *in forma pauperis* is denied by the trial court, the trial court clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the Supreme Court within 30 days after service of notice of the action of the trial court. The motion shall be accompanied by a copy of the affidavit filed in the trial court, or by the affidavit prescribed by Rule 6(a)(1) if no affidavit has been filed in the trial court, and by a copy of the statement of reasons given by the trial court for its action.

(b) *Appointment of counsel on appeal in criminal cases.* Appointed trial counsel shall continue as defendant's counsel on appeal unless relieved by order of the trial court, or, if the appeal has been perfected, by order of the Supreme Court or the Court of Appeals. Any motion for such relief filed with the Supreme Court shall be accompanied by a certified copy of a trial court order appointing substitute counsel pending action by the Supreme Court or the Court of Appeals.

Appointed trial counsel may file a motion to substitute the Indigent Appeals Division of the Office of the State Public Defender, in accordance with Section 99-40-1 of the Mississippi Code. Trial counsel shall remain as the defendant's counsel until relieved by order of the Supreme Court and shall have a continuing duty to cooperate with appellate counsel after relieved by order of the Supreme Court.

(c) *Waiver of counsel in criminal appeal.*

(1) *When appellant has no counsel.* Where an appeal is taken to the Supreme Court, and the appellant is not represented by an attorney, and the existing record does not disclose whether appellant intelligently and competently waived the right to counsel in the State appellate courts, the Supreme Court or the Court of Appeals shall request the trial court to determine:

i. whether the appellant is indigent and unable to employ counsel;

ii. if indigent, whether the appellant desires counsel to be appointed; and

iii. if the appellant does not desire counsel, whether the appellant intelligently and competently waives the right to counsel on appeal.

A transcript shall be made by the court reporter of the hearing on these issues before the trial court, and such transcript and the order of the trial court shall be certified to the Supreme Court or the Court of Appeals and shall be made a part of the record on appeal.

If the trial judge or the appellate court determines that appellant is indigent and is entitled to the appointment of counsel on appeal, and that the appellant has not intelligently and competently waived the same, the trial court shall, except for good cause shown, appoint the Indigent Appeals Division of the Office of the State Public Defender to represent the appellant on appeal in accordance with the provisions of Section 99-40-1 of the Mississippi Code.

If the trial judge or the appellate court determines that appellant is not indigent and that the appellant has not intelligently and competently waived the right to counsel on appeal, the appellate court shall stay the appeal for thirty (30) days so that appellant may hire counsel.

(2) *When Appellant Moves to Dismiss Counsel and Proceed Pro Se on Appeal.* When a criminal appellant moves to dismiss counsel on appeal and proceed pro se, the appellant shall serve a copy of the motion upon current counsel. The appellate court shall request the trial court to determine:

i. whether the appellant is indigent and unable to employ counsel;

ii. if indigent, whether the appellant desires counsel to be appointed; and

(iii) if the appellant does not desire counsel, whether the appellant intelligently and competently waives the right to counsel on appeal.

A transcript shall be made by the court reporter of the hearing on these issues before the trial court, and such transcript and the order of the trial court shall be certified to the Supreme Court or the Court of Appeals and shall be made a part of the record on appeal.

If it is determined that appellant has not intelligently and competently waived the right to counsel on appeal, then the motion to dismiss counsel shall be denied. If it is determined that appellant has intelligently and competently waived the right to counsel on appeal, then the motion to dismiss counsel shall be granted. (Amended August 9, 2007, to provide for appointment of the Mississippi Office of Indigent Appeals; Adopted to govern matters filed on or after January 1, 1995; amended effective August 2, 2012 to include procedural safeguards regarding the waiver of counsel in a criminal appeal.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, M.R.A.P. 6 replaced Miss. Sup. Ct. R. 6, embracing proceedings in the Court of Appeals. 644-647 So. 2d XXXIII-XXXIV (West Miss. Cases 1994).

[Adopted August 21, 1996; amended August 2, 2012.]

COMMENT

Rule 6(a) and (b) provides for appeals *in forma pauperis* in criminal appeals. The rule reflects the salient features of Fed. R. App. P. 24 and Ala. R. App. P. 24. *See* Form 4 for a suggested affidavit to accompany a motion for application to proceed *in forma pauperis*. Rule 6(b) provides that appointed counsel in a criminal case may not be relieved of the responsibility for an appeal absent leave of Court. *Allison v. State*, 436 So. 2d 792 (Miss. 1983).

An accused entitled to counsel at trial is also entitled to counsel in an appeal as of right to the Supreme Court. *Evitts v. Lucey*, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); *Neal v. State*, 422 So. 2d 747, 748 (Miss. 1982). Under federal law, a defendant is entitled to counsel if a sentence of imprisonment is imposed. *Scott v. Illinois*, 440 U.S. 367, 99 S. Ct. 1158, 59 L. Ed. 2d 383 (1979). *See also* Miss. Const. of 1890, art. 3, § 26.

The county prepays costs when an indigent criminal defendant appeals *in forma pauperis*. Miss. Code Ann. § 99-35-105 (Rev. 2000). The Clerk of the Supreme Court charges no fees or costs when a defendant incarcerated at the Mississippi State Penitentiary appeals on pauper's oath. Miss. Code Ann. § 25-7-3 (Rev. 2006).

Rule 6(b) provides for the appointment of the Indigent Appeals Division of the Office of the State Public Defender in accordance with Section 99-40-1 of the Mississippi Code. An indigent appellant shall be represented by the Indigent Appeals Division of the Office of the State Public Defender absent good cause shown.

Rule 6(c) is regarding the waiver of counsel on appeal in criminal cases. The subsection applies regardless of appellant's ability to pay for counsel. The waiver of counsel must be knowingly and intelligently made. The hearing in the trial court mirrors the hearing provided for in MRCrP 7.1(c). If appellant's motion to dismiss counsel is denied, appellant may file a pro se supplemental brief pursuant to Rule 28(b).

[Amended August 2, 2012; July 1, 2017.]

JUDICIAL DECISIONS

Indigent defendants.
Right to self representation.

Indigent defendants.

Court erred in denying defendant's motion for postconviction relief, which requested that he be allowed to file an out-of-time appeal after his appeal was dismissed for failure to pay costs, because his trial counsel had been appointed, indicating that he was indigent. The costs of his appeal should have been paid by the county pursuant to Miss. R. App. P. 6(a)(2). Crump v. State, 913 So. 2d 385 (Miss. Ct. App. 2005).

Right to self representation.

Defendant's motion to dismiss his appellate counsel was granted, as the trial judge informed him of his constitutional rights and the perils of self-representation, and he stated unequivocally that he desired to act as his own attorney. Grim v. State, 102 So. 3d 1073 (Miss. 2012), writ of certiorari denied by 133 S. Ct. 2856, 186 L. Ed. 2d 914, 2013 U.S. LEXIS 4827, 81 U.S.L.W. 3702 (U.S. June 24, 2013).

Rule 7. Security for costs on appeal in civil cases. [Omitted].

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 7 replaced Miss.Sup.Ct.R. 7, 644-647 So.2d XXXIV (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 7 was amended to delete material concerning the transition from statutory procedures to Rule practice. 632-635 So.2d LI (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 7 is omitted from these rules because provisions for costs on appeal are found in Rule 11. This is consistent with prior statutory practice.

Rule 8. Stay or injunction pending appeal.

(a) *Stay by clerk's approval of supersedeas bond.* The appellant shall be entitled to a stay of execution of a money judgment pending appeal if the appellant gives a supersedeas bond, payable to the opposite party, with two or more sufficient resident sureties, or one or more guaranty or surety companies authorized to do business in this state, in a penalty of 125 percent of the amount of the judgment appealed from, conditioned that the appellant will satisfy the judgment complained of and also such final judgment as may be made in the case. The clerk of the trial court shall approve any such bond and the approval of the supersedeas bond by the clerk shall constitute a stay of the judgment. In the event the clerk declines to approve the bond, or the clerk's approval is contested, or the appellant seeks a stay on any basis other than compliance with this subdivision, the requirements of Rule 8(b) apply.

(b) *Other stays must ordinarily be sought in the first instance from the trial court.*

(1) Application for a stay of the judgment or the order of a trial court pending appeal or for approval or disapproval of a contested supersedeas bond or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance to the trial court. The court shall require the giving of security by the appellant in such form and in such sum as the court deems proper, and for good cause shown may set a supersedeas bond in an amount less than the 125 percent required in cases under Rule 8(a).

(2) However, a bond or equivalent security required on any money judgment entered in whole or in part on account of punitive damages shall, as to the punitive damages portion of the judgment only, be the lower of:

(a) 125 percent of the total amount of punitive damages, or

(b) ten percent of the net worth of the defendant seeking appeal as determined by applying generally accepted accounting principles to the defendant's financial status as of December 31, of the year prior to the entry of the judgment for punitive damages.

(c) Absent unusual circumstances, the total amount of the required bond or equivalent security for any case as to punitive damages shall not exceed $100,000,000.

(3) To qualify for reduction of bond or equivalent security under subpart (b)(2)(b), there must be a good and sufficient showing that the imposition of a supersedeas bond of 125% of the full judgment appealed from would place that appellant in a condition of insolvency or would otherwise substantially threaten its future financial viability.

(4) When the appellant is allowed the benefit of a reduction in bond or equivalent security under subpart (b)(2)(b) or (c), the court may require submission of such reports or evidence to the court and to opposing parties as will allow them to be properly informed of the financial condition of the appellant during the period of supersedeas. If at any time after notice and hearing, the court finds that an appellant who has posted a bond or equivalent security for less than 125 percent of the full amount of the judgment has taken actions that affect the financial ability of the appellant to respond to the judgment, or has taken other actions with the intent to avoid the judgment, the court shall increase the bond or equivalent security to the full 125 percent of the judgment. If the appellant does not post the additional bond required by the court, the stay shall be revoked.

(5) If a hearing is necessary for issues arising under subpart (b), the judgment shall be stayed during such hearing and for ten days following the trial court's ruling. The ruling of the trial court on motions filed under this subpart (b) shall be reviewable by the Supreme Court or the Court of Appeals.

(c) *Motion to stay or vacate stay in Supreme Court.* A motion for such relief may be made to the Supreme Court (or to the Court of Appeals in cases assigned by the Supreme Court to the Court of Appeals) but the motion shall show that the application to the trial court for relief sought is not practicable, or that the trial court has denied an application or has failed to afford the relief which the applicant has requested, with the reasons given by the trial court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. The applicant shall file an original and four (4) copies of the motion for stay and, if the motion is opposed, shall attach legible copies of the documents listed below. If the applicant asserts that time does not permit the filing of a written motion, applicant shall deliver to the clerk five (5) legible copies of each of the listed documents as soon as possible. If any listed document cannot be attached or delivered, a statement of the reason for the omission shall be substituted. The documents required are:

(1) the application to the trial court for a stay;

(2) each brief or memorandum of authorities filed by a party to the application in the trial court;

(3) the opinion giving the reasons advanced by the trial court for denying relief;

(4) the trial court order or judgment denying relief.

Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk of the Supreme Court and will be considered by a panel of the Supreme Court or the Court of Appeals. In emergency cases the application may be considered by a single justice or judge of the appropriate appellate court, and the applicant shall file the motion with the clerk of the Supreme Court in writing as promptly as possible.

(d) *Stay may be conditioned upon the giving of a bond; proceedings against sureties.* Relief available in the Supreme Court or the Court of Appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the trial court. If the security is given in the form of a bond or stipulation or undertaking with one or more sureties, each surety submits itself to the jurisdiction of the trial court and irrevocably appoints the clerk of the trial court as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The surety's liability may be enforced on motion in the trial court without the necessity of an independent action. The motion and notice of the motion may be served upon the clerk of the trial court, who shall forthwith mail copies to the sureties if their addresses are known. (Amended April 26, 2001.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss. R. App. P. 8 replaced Miss.Sup.Ct.R. 8, embracing proceedings in the Court of Appeals. 644-647 So.2d XXXV-XXXVII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 8(a) is based on Miss. Code Ann. § 11-51-31 (Supp. 1994) and Ala. R. App. P. 8(a). It provides for a stay of a money judgment pending appeal upon approval of a *supersedeas* bond by the clerk of the trial court. In a case involvi0ng only a money judgment, the appellant can obtain a stay by posting a bond approved by the clerk. A form for a *supersedeas* bond is found in Form 5 in the Appendix of Forms.

All matters concerning stays are to be resolved in the first instance by the trial court, if possible.

If the trial court clerk declines to approve the bond, the appellant must apply to the trial court for approval under Rule 8(b). If the clerk approves the bond and the appellee contests it for any reason, the appellee must file a motion with the trial court for disapproval of the bond and to vacate the stay. If the appellant seeks a stay on any basis other than by posting a 125 percent bond to supersede a money judgment, the appellant must apply to the trial court for a stay. In determining whether to grant a stay, the trial court should endeavor to protect the prevailing party. The purpose of a supersedeas bond is to preserve the status quo while protecting the judgment creditor's rights pending appeal.

The trial court may grant or deny a stay upon such terms as to bond or otherwise as it considers proper for the security of the adverse party. It may approve security in the form of a cash or property bond. *See* M.R.C.P. 62.

While the trial court may not require a bond greater than 125 percent to supersede a money judgment, the court may, in appropriate cases, approve a supersedeas bond of less than 125 percent of the money judgment. *See Henry v. First National Bank*, 424 F. Supp. 633, 639 (N.D. Miss.), aff'd 595 F. 2d 291, 305 (5th Cir. 1979). If an appellant seeks relief from the full bond requirement, the trial court must, upon notice and hearing find that good cause justifies a departure from the usual bond requirements. At the hearing, the burden to provide a secure alternative to the required bond rests on the judgment debtor. Before the trial court can grant a reduced bond, there must be an objective demonstration that the appellant's financial strength and ability to respond will remain undiluted during the pendency of the appeal. A record sufficient to allow review should be made. The maximum bond in a contempt case is set by statute, Miss. Code Ann. § 11-51-11 (Supp. 1994). When the judgment is not a money judgment, the court may, but is not required to, follow the practice of statutes supplanted by this rule, e.g., now-repealed Miss. Code Ann. § 11-51-35 (Supp. 1986) (double one year's rent to stay execution of a writ of possession in ejectment); § 11-51-39 (Supp. 1986) (double value of real estate to be surrendered); now-repealed § 11-51-41 (1972) (double value of real estate or charges on real estate).

Under Miss. Code Ann. § 11-51-101 (Supp. 1994), certain parties, including the state, counties, municipalities, public officers, state educational or charitable institutions, and federally-owned corporations are entitled to an automatic stay without posting bond or any action by the clerk of the trial court under this rule. Similarly, no additional action by the clerk of the trial court is required when the appellant has already posted a sufficient bond prior to judgment under statutes governing appeals by executors, administrators, and guardians, Miss. Code Ann. § 11-51-99 (Supp. 1994), or appeals in estate tax cases, Miss Code Ann. § 27-9-47 (1994), or appeals from the State Tax Commission, Miss. Code Ann. § 27-35-163 (Supp. 1994).

Rule 8(c) and 8(d) are based on Fed. R. App. P. 8 and 5th Cir. R. 8.1.1. They set forth the procedure to be followed when an appellant or appellee contests the trial court's action on a stay.

[Amended, April 26, 2001.]

JUDICIAL DECISIONS

Bond on money judgment.
Denial of automatic stay of execution.
Secure interests.

Bond on money judgment.

Chancery court erred in finding a father in contempt for nonpayment of an increased child support award because he was advised and reasonably believed a supersedeas bond would stay the retroactive and monthly child-support payments, and the court clerk approved his bond and issued a stay on enforcement; because the supreme court never specifically addressed the rule's effect on monthly child-support payments, the father's reliance on the supersedeas bond was not contemptuous or disobedient. McKinney v. Hamp, 268 So. 3d 470 (Miss. 2018).

Chancery court properly ruled that prospective, monthly, child-support obligations were not money judgments that could be stayed by a supersedeas bond, and thus, a father was required to apply for and be granted a supersedeas bond or to make the increased, monthly, child-support payments; however, the chancery court erred in ruling a supersedeas bond could not stay execution on the retroactive child support. McKinney v. Hamp, 268 So. 3d 470 (Miss. 2018).

Because child-support arrearages and other definitive, one-time, child-support payments can be reduced to money judgments, a supersedeas bond can protect an appellee, but that is not necessarily the case for prospective, monthly, child-support obligations; these are not money judgments and cannot be stayed by a supersedeas bond. McKinney v. Hamp, 268 So. 3d 470 (Miss. 2018).

Chancery court did not err in denying a county board of supervisors a supersedeas bond because nothing in the judgment awarded anything to anyone, it merely validated bonds; the chancery court reviewed the evidence of costs submitted by the board and also took note of the hardship that would cause to the objectors. Lauderdale Cnty. v. Lauderdale Cnty. Bd. of Supervisors, 172 So. 3d 714 (Miss. 2015).

Plaintiff does not waive the right to sue a circuit clerk for negligently approving a supersedeas bond if the plaintiff did not challenge the circuit clerk's approval of that bond. Newton County v. State ex rel. Dukes, 133 So. 3d 819 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 8 (Miss. Jan. 9, 2014), affirmed in part and reversed in part by, remanded by 133 So. 3d 805, 2014 Miss. LEXIS 143 (Miss. Mar. 6, 2014).

Trial court erred in enforcing a deficient supersedeas bond against a city to satisfy the judgments against codefendants because it could not be considered a surety since it was already principally liable for a portion of the judgment. City of Belzoni v. Johnson, 121 So. 3d 216 (Miss. 2013).

Miss. R. App. P. 8 does not require that a bond be posted in order to appeal a money judgment. St. Paul Travelers Ins. Co. v. Burt, 982 So. 2d 992 (Miss. Ct. App. 2008).

Workers' compensation insurer was not required to post a supersedeas bond because Miss. R. App. P. 8 did not require that a bond be posted in order to appeal a money judgment, the insurer did not seek a stay of execution of the money judgment, and the insurer instead sought the reversal of a circuit court's order that determined how the funds were to be divided among the parties. St. Paul Travelers Ins. Co. v. Burt, 982 So. 2d 992 (Miss. Ct. App. 2008).

Trial court did not err in awarding each party 50 percent of marital assets where the husband maintained the farms and helped wife through medical school, which gave her a higher income, but the trial court erred in determining the amount of the supersede as bond because the bond on the money judgment awarded to the husband should have been set in accordance with Miss. R. App. P. 8, and the bond on the farm awarded to the husband should have been set according to Miss. Code Ann. § 11-51-39. Deal v. Wilson, 922 So. 2d 24 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 127 (Miss. 2006).

Denial of automatic stay of execution.

Grant of summary judgment in favor of the neighbors in their action against other neighbors to have fences removed was appropriate pursuant to Miss. R. App. P. 8 (b)(1) since a supersede as bond was still proper even where the relief appealed was nonmonetary, such as injunctive relief. Journeay v. Berry, 953 So. 2d 1145 (Miss. Ct. App. 2007).

Assuming that Miss. R. App. P. 8(b)(5) was applicable to the mother's case, the mother was entitled to no relief where, immediately after the trial court denied a stay of judgment, she petitioned the supreme court for relief, and a three-justice panel of the supreme court ultimately denied her request for a stay pending appeal; the trial court committed no error in denying the mother's request for an automatic stay of execution of the chancery court order. J.E.W. v. T.G.S., 935 So. 2d 954 (Miss. 2006).

Secure interests.

County court did not abuse its discretion in ordering garnished funds to be deposited in the court registry in lieu of a supersedeas bond because the amount deposited was more than the 125 percent of the judgment bond requirement; a contractor never obtained a supersedeas bond, but the county court's requiring the garnished funds to be deposited in the court registry had the same effect as a supersedeas bond, to provide absolute security to a company. Knights Marine & Indus. Servs. v. Gulfstream Enters., 216 So. 3d 1164 (Miss. Ct. App. 2017).

Agency had satisfied the purpose of posting a supersedeas bond and was entitled to an appeal. The subcontractor's interests were secure and it was more protected than it would have been if the agency had simply posted a bond of 125 percent because there was an actual money judgment in the court's registry. Tupelo Redevelopment Agency v. Gray Corp., 972 So. 2d 495 (Miss. 2007).

RESEARCH REFERENCES

Law Reviews — Litigation in Mississippi Today: A Symposium: Life in Lawsuit Central: An Overview of the Unique Aspects of Mississippi's Civil Justice System, 71 Miss. L.J. 359, Winter, 2002.

Litigation in Mississippi Today: A Symposium: Mississippi's Civil Justice System: Problems, Opportunities and Some Suggested Repairs, 71 Miss. L.J. 395, Winter, 2002.

Litigation in Mississippi Today: A Symposium: Why Mississippi Needs to Pay Attention to National Trends on Punitive Damages, 71 Miss. L.J. 579, Winter, 2002.

Now Open for Business: The Transformation of Mississippi's Legal Climate, 24 Miss. C. L. Rev. 393, Spring, 2005.

Rule 9. Release in criminal cases.

(a) *Release prior to a judgment of conviction.* A petition challenging an order refusing or imposing conditions of release shall be heard promptly by the Supreme Court or the Court of Appeals if the case has been assigned to the Court of Appeals. Upon entry of an order refusing or imposing conditions of release, the trial court shall state in writing the reasons for the action taken. Where the petition challenges an order denying bail or setting bail which the challenging party contends is excessive, the challenging party shall file contemporaneously with the petition such papers, affidavits, and portions of the record as will show:

(1) the nature and circumstances of the offense charged;
(2) the weight of the evidence;
(3) family ties of the defendant;
(4) defendant's employment status;
(5) defendant's financial resources;

(6) defendant's character and mental condition;

(7) defendant's length of residence in the community;

(8) defendant's record of prior convictions;

(9) defendant's record of appearances or flight;

(10) a copy of the trial court's order regarding bail;

(11) where available, a transcript of the trial court proceedings regarding bail. If the party is unable to obtain such a transcript, the party shall state in an affidavit the reasons the party cannot obtain it;

(12) such other matters as may be deemed pertinent.

An original and four (4) copies of the petition and accompanying documents shall be filed with the clerk of the Supreme Court. The Supreme Court or the Court of Appeals may require that additional copies be furnished.

(b) *Release pending appeal from a judgment of conviction.* Release after judgment of conviction of a felony and pending direct appeal shall be governed by statute and uniform rule. A party seeking release shall file with the party's motion for release the same papers, affidavits, and portions of the record as are required by Rule 9(a).

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 9 replaced Miss.Sup.Ct.R. 9, embracing proceedings in the Court of Appeals. 644-647 So.2d XXXVII-XXXVIII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 9(a) is substantially patterned after Fed. R. App. P. 9(a). Subdivision (b) continues Mississippi practice for release after judgment of conviction provided in MRCrP 8.3, Miss. Code Ann. §§ 99-35-105, 99-35-107, 99-35-109 (1994), Miss. Code Ann. § 99-35-115 (1994), Miss. Code Ann. § 99-35-117 (1994). Both 9(a) and (b) require the party seeking release to provide the appellate court with certain information relevant to release. *See* former 5th Cir. R. 9.1, 9.2. Normally these facts will be part of the record in the trial court. Both petitions under 9(a) and motions under 9(b) will be handled by the appropriate appellate court as motions under Rule 27.

[Amended effective April 18, 2007; July 1, 2017.]

Rule 10. Content of the record on appeal.

(a) *Content of the record.* The parties shall designate the content of the record pursuant to this rule, and the record shall consist of designated papers and exhibits filed in the trial court, the transcript of proceedings, if any, and in all cases a certified copy of the docket entries prepared by the clerk of the trial court.

(b) *Determining the content of the record.*

(1) Designation of Record. Within seven (7) days after filing the notice of appeal, the appellant shall file with the clerk of the trial court and serve both on the court reporter or reporters and on the appellee a written designation describing those parts of the record necessary for the appeal.

(2) Inclusion of Relevant Evidence. In cases where the defendant has received the death sentence, the entire record shall be designated. In any other case, if the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Matters Excluded Absent Designation. In any case other than a case where the defendant has received a death sentence, the record shall not include, unless specifically designated,

i. subpoenas or summonses for any witness or defendant when there is an appearance for such person:

ii. papers relating to discovery, including depositions, interrogatories, requests for admission, and all related notices, motions or orders;

iii. any motion and order of continuance or extension of time;

iv. documents concerning the organization of the grand jury or any list from which grand or petit jurors are selected;

v. pleadings subsequently replaced by amended pleadings;

vi. jury voir dire.

(4) Statement of Issues. Unless the entire record, except for those matters identified in (b)(3) of this Rule, is to be included, the appellant shall, within the seven (7) days time provided in (b)(1) of this Rule, file a statement of the issues the appellant intends to present on the appeal and shall serve on the appellee a copy of the designation and of the statement. Each issue in the statement shall be separately numbered. If the appellee deems inclusion of other parts of the proceedings to be necessary, the appellee shall, within 14 days after the service of the designation and the statement of the appellant, file with the clerk and serve on the appellant and the court reporter a designation of additional parts to be included. The clerk and reporter shall prepare the additional parts at the expense of the appellant unless the appellant obtains from the trial court an order requiring the appellee to pay the expense.

(5) Attorney's Examination and Proposed Corrections. For fourteen (14) days after service of the clerk's notice of completion under Rule 11(d)(2), the appellant shall have the use of the record for examination. On or before the expiration of that period, appellant shall return the record to the trial court clerk, and shall append to the record (i) a written statement of any proposed corrections to the record, (ii) a certificate that the appellant or the appellant's attorney has carefully examined the record and that with the proposed corrections, if any, it is correct and complete, and (iii) a certificate of service, indicating that the record has been returned to the clerk. For fourteen (14) days after receipt of the certificate of service from appellant shall have the use of the record for examination. On or before the expiration of that period, appellee, shall return the record to the trial court clerk, and shall append to the record (i) a written statement of any proposed corrections to the record, (ii) a certificate that the appellee or the appellee's attorney has carefully examined the record and that with the proposed corrections, if any, it is correct and complete, and (iii) a certificate of service, indicating that the record has been

returned to the clerk. Corrections as to which all parties agree in writing shall be deemed made by stipulation. If the parties propose corrections to the record but do not agree on the corrections, the trial court clerk shall forthwith deliver the record with proposed corrections to the trial judge. The trial judge shall promptly determine which corrections, if any, are proper and enter and order under Rule 10(e). Within five days, the trial court clerk shall serve all parties and their attorneys with a copy of the order. If a party does not agree with the court's order, that party shall, within five days of service of the order, request a hearing. Such a request shall be assigned priority status on the trial judge's docket, and after a hearing, the trial judge shall promptly enter an order directing the court reporter and/or the trial court clerk to make the appropriate corrections(s), if any, and to finalize completion of the record for transmission to this Court. Once the order is entered, or if no hearing request is made, the record shall be returned to the court reporter and/or the trial court clerk who shall within seven days make corrections directed by the order. The trial court clerk shall verify that any approved changes have been made and that the required certifications are appended to the record before sending it to the Supreme Court.

(c) *Statement of the evidence when no report, recital, or transcript is available.* If no stenographic report or transcript of all or part of the evidence or proceedings is available, the appellant may prepare a statement of the evidence or proceedings from the best available means, including recollection. The statement should convey a fair, accurate, and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant or his counsel as an accurate account of the proceedings, shall be filed with the clerk of the trial court within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee objects to the statement as filed, the appellee shall file objections with the clerk of the trial court within 14 days after service of the notice of the filing of the statement. Any differences regarding the statement shall be settled as set forth in subdivision (e) of this Rule.

(d) *Agreed statement as the record on appeal.* In lieu of a record on appeal designated pursuant to subdivisions (b) or (c) of this Rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the trial court and shall then be certified to the Supreme Court as the record on appeal.

(e) *Correction or modification of the record.* If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated in the record, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court or the Court of Appeals, or either appellate court on proper motion or of its own initiative, may order that the omission or misstatement be corrected, and, if necessary, that a supplemental record be filed. Such order shall state the date by which the correction or supplemental record must be filed and shall designate the party or parties who shall pay the cost thereof. Any document submitted to either appellate court for inclusion in the record must be certified by the clerk of the trial court. All other questions as to the form and content of the record shall be presented to the appropriate appellate court.

(f) *Limit on authority to add to or subtract from the record.* Nothing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal. (Amended effective January 1, 1999; amended July 1, 1999; amended effective July 1, 2011, to revise the procedure for attorney's examination and proposed corrections.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 10 replaced Miss.Sup.Ct.R. 10, embracing proceedings in the Court of Appeals. 644-647 So.2d XXXVIII-XLI (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 10 was amended to delete references to repealed statutes and material concerning the transition from statutory procedures to Rule practice. 632-635 So.2d LI (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 10 is based on Fed. R. App. P. 10, taking into account modifications suggested by the more recent Ala. R. App. P. 10 and Tenn. R. App. P. 24.

The purpose of the Rule is to permit and encourage parties to include in the record on appeal only those matters material to the issues on appeal. While subdivision (b) will govern most appeals, subdivisions (c) and (d) provide alternate methods of preparing the record, either when no transcript is available, or when the parties can agree on a "statement of the case" that will adequately present the issues on appeal.

Subdivision (b) eliminates the confusion that followed *City of Mound Bayou v. Roy Collins Const. Co.*, 457 So. 2d 337 (Miss. 1984). That case directed court reporters to record everything transpiring at trial, including voir dire and bench and chambers conferences. It also, however, ended the jurisdictional requirement of designating the record pursuant to Miss. Code Ann. § 9-13-33(1) to (4) (Supp. 1986). In doing so, it inadvertently encouraged use of the entire record, a practice the Court then condemned in *Byrd v. F-S Prestress, Inc.*, 464 So. 2d 63, 69 (Miss. 1985). This rule reinstates the express requirement that the appellant designate those parts of the record to be included on appeal. Form 2 in the Appendix of Forms is a form for designation of the record. This requirement is no longer jurisdictional, but a failure to comply with it could lead to dismissal pursuant to Rule 2(a)(2). This is consistent with federal practice.

Pursuant to subdivision (b)(3), a general designation will not be construed to include certain papers normally irrelevant to the issues on appeal. The rule thus encourages the omission of these nonessential matters. Because counsel customarily do not file trial court briefs with the clerk, briefs are not included in the (b)(3) list. Briefs do not normally belong in a record on appeal, unless necessary to show that an issue was presented to the trial court.

A designation of certain issues under subdivision (b)(4) does not preclude a party from stating other issues in its brief under Rule 28(a)(3). However, a party asserting other issues in its brief will bear responsibility for the cost of preparing any additional portions of the record subsequently designated by any other party in response to the statement of additional issues. As a result, accurate designation under (b)(4) is advisable.

Subdivision (f) clearly states that the flexible procedures of this rule are not intended to permit a party to augment the record with matters entered ex parte.

JUDICIAL DECISIONS

Inaccurate record.
Incomplete record.
Jury instruction.
Motion for free copy of record.
Motion to strike granted.
Request for designation of the record denied.
Statement of the case.
Supplementation of the record.
Transfer of record.
Voluminous record.

Inaccurate record.

It appeared that the record, specifically the judgment, did not accurately reflect what happened in the trial court, and appellee sought relief to have the trial court correct the judgment to reflect the opinion. Therefore, the chancery court's correction of the judgment under Miss. R. App. P. 10(e) was permissible. City of Horn Lake v. Sass Muni-V, LLC, 268 So. 3d 514 (Miss. 2018).

Incomplete record.

Because appellant, who designated less than the entire record for inclusion in the record on appeal, failed to comply with the requirement to file a statement of the issues that the appellant intended to raise on appeal, appellee would not have known that child support was at issue in the appeal until appellant filed appellant's opening brief. Abercrombie v. Abercrombie, — So. 3d —, 2019 Miss. App. LEXIS 406 (Miss. Ct. App. Aug. 20, 2019).

Defendant was entitled to a new trial because the appellate court could not provide a meaningful appellate review where the court reporter died before completing the transcript and much of the trial's proceedings were impossible to transcribe, and while defendant and the trial court constructed statements of the evidence, defendant was denied due process and was not required to show specific prejudice where she was represented by different counsel on appeal than at trial. Buckner v. State, 200 So. 3d 1104 (Miss. Ct. App. 2016).

Argument that the landowners had not properly preserved any issue for appeal was rejected where the bill of exceptions, while not finalized until well after the 10-day requirement for an appeal, served as the entire record on appeal, and thus, the landowners were not required to file a separate statement of issues when they appealed the entire record. Gallagher v. City of Waveland, 182 So. 3d 471 (Miss. Ct. App. 2015), writ of certiorari denied by 181 So. 3d 1010, 2016 Miss. LEXIS 36 (Miss. Jan. 21, 2016).

Defendant could not corredct the record to include certain items because the rule was not a vehicle for admitting new evidence into the record, a role generally reserved for the trial court; rather, the rule is a method for correcting the appellate record to reflect what occurred in the trial court. Corrothers v. State, 148 So. 3d 278 (Miss. 2014), writ of certiorari denied by 135 S. Ct. 2835, 192 L. Ed. 2d 877, 2015 U.S. LEXIS 3926, 83 U.S.L.W. 3901 (U.S. June 15, 2015), remanded by 2017 Miss. LEXIS 486 (Miss. Oct. 19, 2017).

Where defendant never filed a statement of the evidence or proceedings from recollection, he failed to preserve the issue of an incomplete transcript on appeal for failure to object contemporaneously and failure to follow this rule. Keller v. State, 138 So. 3d 817 (Miss. 2014), writ of certiorari denied by 135 S. Ct. 1397, 191 L. Ed. 2d 371, 2015 U.S. LEXIS 1353, 83 U.S.L.W. 3677 (U.S. Feb. 23, 2015).

Record was insufficient to allow an appellate court to examine the issue of whether there was probable cause for a police officer to order a blood draw on defendant following a vehicle accident, because defendant failed to include a transcript of the evidence as required by Miss. R. App. P. 10. Scott v. State, 24 So. 3d 1039 (Miss. Ct. App. 2010).

In a case in which the trial court sentenced defendant as a habitual offender pursuant to Miss. Code Ann. § 99-19-81, defendant successfully argued on appeal that the State failed to prove that he had two prior felony offenses and had received a sentence of at least one year for each conviction. The State acknowledged that the exhibits submitted to the appellate court did not include a copy, certified or non-certified, of a 1992 felony conviction for defendant. Williams v. State, 32 So. 3d 1222 (Miss. Ct. App. 2009).

Chancery court did not err in granting a divorce on the ground of desertion even though the proceedings were not heard in open court as required by Miss. Code Ann. § 93-5-17(1); there was nothing in the record to contradict the chancellor's finding regarding the wife's grounds for divorce, and the husband, who failed to answer or appear, failed to follow Miss. R. App. P. 10(c), which might have created a record on appeal. Luse v. Luse, 992 So. 2d 659 (Miss. Ct. App. 2008).

Under the express language of Miss. R. App. P. 10(b)(3), any summonses issued in a case, and returns thereon, should have been included in the record, even absent designation, because the record was devoid of any appearance made by a father in youth court proceedings. In the Interest of N.W., 978 So. 2d 649 (Miss. 2008).

Grant of summary judgment in favor of the doctor in a medical malpractice action was appropriate under Miss. R. App. P. 10(b)(3)(iii) because the appellate court was unable to consider the contents of depositions taken that were not attached as exhibits to motions since they were not specifically designated as part of the record for appeal. Hubbard v. Wansley, 954 So. 2d 951 (Miss. 2007).

Defendant's conviction and sentence for possession of controlled dangerous substance, cocaine, in violation of Miss. Code Ann. § 41-29-139 was affirmed when the state's introduction of a photograph, which included marijuana and violated a pretrial order that the state would not divulge evidence of marijuana to the jury, did not constitute a reversible error when defendant failed to timely object to the introduction of the photograph, failed to include his motion for a mistrial in the record, and failed to correct omissions in the record pursuant to Miss. R. App. P. 10(c) to address his claim that the was denied a meaningful appeal. Hales v. State, 933 So. 2d 962 (Miss. 2006).

Court refused to address a patient's constitutional claims on appeal because they had not been raised first in the trial court. Southern v. Miss. State Hosp., 853 So. 2d 1212 (Miss. 2003).

Absent a record basis to determine otherwise, the appellate court presumed the chancellor's order of contempt was based on adequate evidence; if the chancellor did refuse to admit the receipt book that the mother stated she had compiled and then offered, the appellate court would presume that the chancellor did at least hear evidence that no payments were made. Thompson v. Miss. Dep't of Human Servs., 856 So. 2d 739 (Miss. Ct. App. 2003).

Appellants failed to preserve an assignment of error for appeal where the record was inadequate to permit review by the appellate court as the appellants could have presented their issue to the appellate court by describing the trial court's ruling pursuant to Miss. R. App. P. 10(c). Palmer v. Volkswagen of Am., Inc., 905 So. 2d 564 (Miss. Ct. App. 2003), affirmed in part and reversed in part by, remanded by 2005 Miss. LEXIS 21 (Miss. Jan. 13, 2005), affirmed in part and reversed in part by, remanded by 904 So. 2d 1077, 2005 Miss. LEXIS 247 (Miss. 2005).

While Rule 10(b)(2) does require an appellant to provide a proper designation to allow the reviewing court to resolve the issues, an appellee has the opportunity to supplement the appellant's designation if the appellee feels that it is deficient, and should not then be allowed to complain if he fails to do so. Norwood v. In re Extension of the Boundaries of Itta Bena, 788 So. 2d 747 (Miss. 2001).

The could not review the defendant's allegation of error, which pertained to an unreported bench conference and the excusal of a potential juror for cause, where he failed to prepare a statement of the evidence or proceedings from the best available means, including recollection. Edwards v. State, 723 So. 2d 1221 (Ct. App. 1998).

Where the defendant was represented by the same counsel on appeal as he was at his trial, the court may properly require counsel to articulate the prejudice that may have resulted from a failure to record a portion of the proceedings order to mandate reversal and remand for a new trial. Watts v. State, 717 So. 2d 314 (Miss. 1998).

Jury instruction.

Even though defendant's proffered jury instruction on misdemeanor receipt of stolen property should have been provided in the record, an appeal was not procedurally barred because there was a lengthy discussion of the particular instruction during a bench conference that appeared in the record. Lindsey v. State, 990 So. 2d 270 (Miss. Ct. App. 2008).

Motion for free copy of record.

Denying defendant's motion for a free copy of an appellate record did not violate Miss. R. App. P. 10(b)(5) because defendant did not sufficiently plead why defendant needed the record, as defendant's use of a general, pre-populated list of allegations contained in a motion template did not sufficiently supply a required need or purpose for the documents. Clark v. State, 54 So. 3d 304 (Miss. Ct. App. 2011).

Motion to strike granted.

Owners association's motion to strike a homeowner's brief was granted because the brief was full of language disrespectful to the chancellor, and it was based on matters outside the record on appeal; the homeowner cited no authority to show that any of the chancellor's rulings were erroneous, and nothing in the record reflected bias on the part of the chancellor. Hatfield v. Deer Haven Homeowners Ass'n, 234 So. 3d 1269 (Miss. 2017).

Defendant correctly argued that under Miss. R. App. P. 10(f), the transcript pages attached to plaintiffs' brief were not part of the record in the chancery court, and therefore not considered by the chancellor when ruling on the summary judgment motions, and should not have been considered by the reviewing court. Consequently, the reviewing court granted defendant's motion to strike. KBL Props., LLC v. Bellin, 900 So. 2d 1160 (Miss. 2005).

Request for designation of the record denied.

Circuit court did not err in refusing to grant defendant's request for designation of the record under Miss. R. App. P. 10(b)(1) where, pursuant to Miss. Code Ann. § 99-39-5, his desire to pursue a civil action was not a ground for relief; the request failed to comply with Miss. Code Ann. § 99-39-9. Willis v. State, 950 So. 2d 200 (Miss. Ct. App. 2006).

Statement of the case.

Where a mother appealed from orders signed in a custody case that might have resulted from a settlement, a dismissal was appropriate because the notice of appeal should have been construed as a motion for relief under Miss. R. Civ. P. 60; the mother was given some leeway as she was proceeding pro se. It could not be determined whether a first order signed by a chancellor was the result of a settlement where no transcript of events was available, the father's statement of the case contended there was such an agreement, and the mother's attorney signed "approved as to form only." Klein v. McIntyre, 966 So. 2d 1252 (Miss. Ct. App. 2007).

Supplementation of the record.

Although defendant included as a record excerpt an affidavit of defendant's attorney in an effort to attach new exhibits that were not part of the record on appeal, defendant was prohibited from supplementing the record in this way. Defendant's efforts to include documents into the record on appeal without following the rules and then use those documents in an argument was not an acceptable practice. Day v. State, — So. 3d —, 2019 Miss. App. LEXIS 559 (Miss. Ct. App. Nov. 14, 2019).

Supplementation of the record was necessary on the Supreme Court of Mississippi's own motion in order to convey a fair, accurate, and complete account of what transpired in the trial court because a question existed as to whether a document titled "Petitioner's Proposed Findings of Fact and Conclusions of Law" attached as Exhibit B to the State's appellate brief was in fact submitted to the judge prior to his order. If so, the record needed to be supplemented with said document. State v. Scott, — So. 3d —, 2016 Miss. LEXIS 435 (Miss. Oct. 18, 2016).

Board of supervisors' motion for leave to file a supplemental record with an affidavit, to the effect that a tax anticipation note had been satisfied by the board, was denied because this rule did not contemplate adding to the record material documenting what has occurred after the entry of a final judgment in the trial court. Russell v. Humphreys Cnty. Bd. of Supervisors (In re Validation of Tax Anticipation Note), 187 So. 3d 1025 (Miss. 2016).

Although an appellee contended that because the appellant was the first to file an appeal, the appellant was required to pay for additional parts of the record that the appellee designated, the appellee failed to demonstrate error because the appellee's argument on the point was cursory, and the appellee failed to distinguish between portions of the record necessary for responding to issues raised by the appellant in the appellant's appeal and those which the appellee designated as an appellant in the appellee's own right in the cross-appeal. Weeks v. Weeks, 187 So. 3d 654 (Miss. Ct. App. 2016).

In a case in which petitioners filed a petition for inclusion of certain real property into Oxford, Mississippi, the chancellor did not abuse his discretion in denying the objectors' motion to strike or order petitioners to pay for the supplemental record. Farrell v. Babb (In re Inclusion into Oxford), 142 So. 3d 401 (Miss. 2014).

Where a judge and the Mississippi Commission on Judicial Performance filed a Joint Motion for Approval of Recommendation, the judge's accompanying brief including factual allegations that disputed portions of the joint motion was an impermissible attempt to add to the record. Miss. Comm'n on Judicial Performance v. Dearman, 66 So. 3d 112 (Miss. 2011).

Appellate court had authority to request that the record be supplemented in order for the court to fully understand the procedures behind the administrative law judge's decision. Kitchens v. Jerry Vowell Logging, 874 So. 2d 456 (Miss. Ct. App. 2004).

Appellate court chose not to grant an injured employee's request to supplement the record to include his doctor's testimony in collateral litigation that the employee had suffered permanent disability, when the doctor had testified in the employee's workers' compensation proceeding that the employee had not suffered permanent disability, because the appellate court did not find the new evidence to be an omission from the record. Kemper Nat'l Ins. Co. v. Coleman, 812 So. 2d 1119 (Miss. Ct. App. 2002).

Transfer of record.

The appellant has the duty to ensure that the records arrive at the appropriate court and cannot rely on one county circuit court to ensure that records are transferred to another county circuit court. Zurich Am. Ins. Co. v. Beasley Contr. Co., 779 So. 2d 1132 (Miss. Ct. App. 2000).

Voluminous record.

Although the condominium owner argued that the association should have born the lion's share of the appeal costs because the extensive record on appeal was unnecessary and irrelevant, the appellate court found that while the final, designated record was voluminous, it contained all the necessary information to render a decision. Notwithstanding that the record was very copious, it was necessary and relevant to resolve each issue presented in accordance with Miss. R. App. P. 10. Robertson v. Chateau Legrand Prop. Owner's Ass'n, 39 So. 3d 931 (Miss. Ct. App. 2009).

Rule 11. Completion and transmission of the record.

(a) *Duty of appellant.* After filing the notice of appeal the appellant or, in the event that more than one appeal is taken, each appellant shall comply with the provisions of Rule 10 and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(b) *Estimation and payment of fees.*

(1) *Record preparation estimate and deposit.* Within seven (7) days after filing the notice of appeal, the appellant shall estimate the cost of preparation of the record on appeal, including, but not limited to, the cost of the preparation of the transcript, and shall deposit that sum with the clerk of the court whose judgment or order has been appealed. The appellant shall simultaneously file with the clerk of the trial court a certificate setting forth the fact of compliance with this subparagraph and shall serve a copy of the certificate upon all other parties, upon the court reporter, and upon the Supreme Court Clerk. The estimate shall be calculated pursuant to estimates from the clerk(s) and court reporter(s). If the appellant is unable to obtain an estimate from a clerk within the seven (7) days, the appellant shall calculate the estimate at the statutory rate per page for the approximate number of pages of clerk's papers. If the appellant is unable to obtain an estimate from a court reporter within the seven (7) days, the appellant shall calculate the estimate at the rate of $300.00 per day of proceedings to be transcribed.

(2) *Application to increase deposit.* If dissatisfied with the amount tendered, either the clerk of the trial court or the court reporter may apply for an increase to the trial court which, after reasonable advance notice and opportunity to be heard having been afforded all parties, and for good cause shown, may order the amount of the deposit increased. The party taking the appeal shall comply with any such order within 14 days of the date of entry. The deposit and any such order shall be provisional, subject to adjustment after the transcript has been completed and its actual cost ascertained.

(c) *Duty of court reporter to prepare and file transcript.* Upon completion of the transcript the reporter shall certify the transcript as an accurate account of the proceedings and file the original and one copy of the transcript with the clerk of the trial court. The reporter shall simultaneously certify and serve notice of the filing on the parties and on the clerk of the Supreme Court. Additionally, the reporter shall prepare an electronically formatted medium (such as USB Flash Drive or CD-ROM) of the transcript filed and shall file the electronic medium with the trial court clerk for inclusion in the appellate record. All electronic media and electronic files stored thereon must be in an industrial standardized format with the electronic transcript stored in the Adobe Portable Document Format (PDF). All electronic media shall be labeled to include the following information:

(1) style of the case; and,

(2) number of CD-ROMs, i.e., 1 of 2, 2 of 2, etc.

After such filing and service of notice, the trial court clerk may disburse actual fees earned to the court reporter from estimated fees deposited pursuant to Rule 11(b).

(d) *Duty of trial court clerk to prepare and transmit record.*

(1) *Clerk's preparation of record.* Upon the appellant's compliance with subparagraph (b)(1) and service of the designation required by Rule 10(b)(1), the trial court clerk shall assemble the record as follows:

i. *Clerk's papers.*

(a) *Conventional.* A certified copy of the docket entries prepared by the clerk of the trial court shall be followed by a legible photocopy of any papers filed with the clerk and designated by the parties and a cost bill for the preparation of the record indicating costs for the trial court clerk and court reporter and the Supreme Court filing fee. Within 30 days, the clerk shall assemble the papers in the order of filing, number each page consecutively at the bottom, and transmit a list of the papers correspondingly numbered and identified with reasonable definiteness. All jury instructions shall be placed in the record with court instructions first, instructions given to plaintiff second, instructions refused plaintiff third, instructions given to defendant fourth, and instructions refused defendant fifth.

The trial court clerk shall separate the clerk's papers into volumes of no more than 150 pages for fastening. The clerk shall fasten the clerk's papers on the top and provide suitable covers for each volume. Each volume of clerk's papers shall be bound in a brown binder and the outside of each binder shall designate the page numbers of the pages contained in that volume.

(b) *Electronic.* Within 30 days, the clerk shall use the Mississippi Electronic Court (MEC) system to assemble the record as follows. The docket shall be followed by the papers designated by the parties and a cost bill for the preparation of the record indicating costs for the trial court clerk and court reporter. The clerk shall assemble the papers in the order of filing, except that jury instructions shall be assembled with court instructions first, instructions given to plaintiff second, instructions refused plaintiff third, instructions given to defendant fourth, and instructions refused defendant fifth.

The Supreme Court filing fee shall be mailed to the Supreme Court.

ii. Transcript.

(a) *Conventional.* The original transcript is prepared by the court reporter pursuant to Rule 11(c). The clerk of the trial court shall not renumber the pages of the original transcript, nor make copies of the original transcript, nor handle the original transcript in any way other than to include in the table of contents of the Clerk's Papers the number of volumes contained in the original transcript and include the original transcript as part of the record to be transmitted to the Supreme Court. The court reporter is responsible for preparing, certifying, and binding the transcript and is responsible for furnishing the transcript fully ready for transmission to the Supreme Court.

(b) *Electronic.* The original transcript is prepared by the court reporter pursuant to Rule 11 (c). The court reporter shall either file the transcript electronically or deliver the transcript on an electronic disk to the clerk so that the clerk can then file the transcript electronically. The court reporter is responsible for preparing and certifying the transcript and for furnishing the transcript fully ready for transmission to the Supreme Court.

iii. *Exhibits.*

(a) *Conventional.* Within 30 days, a copy of exhibits designated by the parties shall be assembled in a flat file envelope or a box. If an exhibit is a photograph, the original shall be included and a photocopy retained by the trial court clerk. Video and audio tapes shall be included and a duplicate shall be retained by the trial court clerk. The clerk shall include with the exhibits forwarded to the Supreme Court a list of all exhibits designated by the parties, indicating thereon those retained by the trial court clerk and those submitted to the Supreme Court. Documents of unusual bulk or weight and physical exhibits other than documents, shall not be transmitted by the trial court clerk unless the clerk is directed to do so by a party or by the clerk of the Supreme Court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(b) *Electronic.* Within 30 days, exhibits designated by the parties shall be assembled as follows. If the document or photograph can be scanned, the trial court clerk shall scan the exhibit, convert the file to Adobe Portable Document Format (PDF), and retain the original unless a party or the clerk of the Supreme Court directs otherwise. If the document, photograph, or physical exhibit cannot be scanned. the trial court clerk should, if possible, photograph the exhibit; scan or convert the photograph to PDF; and retain the original unless a party or the clerk of the Supreme Court directs otherwise.

The trial court clerk shall comply with subsection (d)(1)(iii)(a) if

- the exhibit can neither be scanned nor photographed;
- the PDF image is deficient so that the original is necessary; or
- the exhibit is a video or audio recording.

Following the time for attorney's examination and proposed correction under Rule 10(b)(5), the trial court clerk shall send all PDF exhibits to the Supreme Court using the Mississippi Electronic Court (MEC) system. When forwarding exhibits to the Supreme Court, the trial court clerk shall include a list of all designated exhibits, indicating those scanned, those photographed, those submitted conventionally, and those retained by the trial court clerk.

(2) *Transmission of record.* When the clerk's papers and exhibits are assembled and the transcript is received the clerk shall then execute a certificate of compliance with this Rule and serve notice of completion on the parties and on the clerk of the Supreme Court. At the end of the time prescribed by Rule 10(b)(5), the clerk shall immediately deliver the record to the Supreme Court.

(e) *Retention of duplicate record in trial court for use in preparing appellate papers.* The trial court shall retain, pending further order of the Supreme Court, its original docket entries, the original papers held with the clerk, a copy of the list of papers required by Rule 11(d)(1)(i), the original exhibits, other than photographs, a photocopy of photographic exhibits, a copy of video and audio tape exhibits, a duplicate of the reporter's transcript, and table of contents. Attorneys preparing appellate papers may use these retained documents. In cases where the circuit or chancery court has functioned as an appellate court for review of an on-the-record adjudication by an administrative agency or inferior tribunal and the circuit or chancery court clerk determines that a copy of the proceedings of such adjudication is retained in the administrative agency or inferior tribunal, the circuit or chancery court clerk need not copy the record of such proceedings, but must retain the original of the papers and documents attendant to the proceedings in that court while transmitting to the Supreme Court the original of the agency or inferior tribunal record (including transcript, papers, documents, and exhibits), along with a copy of the record of the circuit or chancery court proceedings.

(f) *Record for preliminary hearing in the Supreme Court.* If, prior to the time the record is transmitted, a party desires to make in the Supreme Court a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the trial court at the request of any party shall transmit to the Supreme Court copies of such parts of the original record as any party shall designate, or shall certify them for transmission by the party.

[Adopted to govern matters filed on or after January 1, 1995; amended effective May 23, 2002; amended effective June 27, 2002; amended effective March 23, 2006, to provide that the trial court clerk shall assemble the record at the same time as the court reporter prepares the transcript; amended effective July 1, 2009; amended effective July 1, 2011, to revise the time for preparation of the clerk's papers and exhibits; amended effective January 12, 2017; amended effective October 2, 2017, to allow trial court clerks to transfer exhibits electronically.]

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 27, 2002, Rule 11(c) and the Comment were amended to delete requirements that the reporter prepare and serve an acknowledgment of receipt of the certificate of compliance. 819-821 So.2d XV (West Miss. Cases 2002).

Effective May 23, 2002, Rule 11(b)(1) and the Comment were amended to provide alternative methods for estimating costs. 813-815 So.2d XXVIII (West Miss. Cases 2002).

Effective January 1, 1995, Miss.R.App.P. 11 replaced Miss.Sup.Ct.R. 11. 644-647 So.2d XLI-XLVI (West Miss.Cases 1994).

Effective July 1, 1994, Miss.Sup.Ct.R. 11(d)(2) and Appendix III, section II(1), were amended to provide further detail concerning the binding and labeling of the clerk's papers and the transcript. 632-635 So.2d XLVI-XLVIII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 11(b) provides the appellant shall estimate costs based on estimates received from the clerk(s) and court reporter(s) if available within 7 days after filing the notice of appeal. If either the clerk(s) or court reporters(s) do not provide estimates, Rule 11(b)(1) provides for alternative methods. Even though Rule 3(a) no longer makes prepayment of costs an absolute criterion for perfecting an appeal, the Supreme Court can respond under Rule 2(a)(2) to such failure with an appropriate sanction, including dismissal. Appellants who claim exemption from payment or prepayment of costs, *see, e.g.*, Rule 6 (*in forma pauperis* appeals); Miss.

Code Ann. § 11-53-13 (1972); *City of Mound Bayou v. Roy Collins Const. Co.*, 457 So. 2d 337 (Miss. 1984) (exemption for state, county, city, town or village), should estimate the cost of preparation of the record but claim the exemption in the certificate of compliance required by Rule 11(b)(1). If the exemption is denied, the appellant should then prepay as required by the rule. Form 3 in the Appendix of Forms is a form for the certificate required by this rule.

Rule 11(c) gives to the Supreme Court the authority to rule on certain requests for extension. The Court may empower its clerk to rule on such requests and to grant extensions up to a specified time, e.g., 30 days. The rule prescribes the content of the reporter's request. The rule also provides that the transcript is to conform to the Guidelines for Court Reporters and exhibits are not to be physically incorporated in the transcript, thereby ensuring that all transcripts will be uniform and eliminating the awkward folding and separation of documentary exhibits by page.

Rule 11(c) also requires the court reporter to prepare and file with the original transcript a copy of the transcript in an electronically formatted medium. This procedure provides the Supreme Court a copy of the transcript via electronic format for future reference by the Court, if required.

The transcript table of contents required by Rule 11(c) should comply with Miss. Code Ann. § 9-13-25 (1972).

Rule 11(d) requires that the trial court clerk prepare the record on appeal. It eliminates the binding of records in book form and so avoids an unnecessary expense to the parties. Under Rule 11(d), the record as transmitted will consist of (1) the certified copy of docket entries, a photocopy of filed papers designated by the parties, and a cost bill; (2) the original transcript; and (3) an envelope or box containing a copy of designated exhibits accompanied by the list identifying which exhibits are retained by the clerk and which are submitted to the Supreme Court required by Rule 11(d)(1)(iii). The clerk may mark the certified copy of docket entries with the page numbers corresponding to each entry and so provide the list of documents required by Rule 11(d)(1)(i). Form 6 in the Appendix of Forms is a form for a list of clerk's papers. The form can be used if the docket sheet is illegible or for any other reason a satisfactory list cannot be produced by adding record page numbers to the docket sheet. The rule does not follow the federal practice of appeals entirely on the original record, but retains the requirement of copying original papers and exhibits for use by the Supreme Court. This requirement reduces the bulk of documents to be reviewed by the Court and provides for a duplicate copy of essential records.

The requirement that the clerk duplicate exhibits may, in some cases, impose an unnecessary expense on the parties. For this reason, Rule 11(d) provides that the clerk shall not duplicate documents of unusual bulk or weight and Rule 12 provides for the transmission of original items to the Supreme Court. The retention of designated records in the trial court would not preclude the parties from including parts of those records in their record excerpts submitted pursuant to Rule 30. Rules 11(d)(1)(iii) and 11(e) provide that the trial court clerk is to retain a photocopy of exhibits which are photographs and a copy of video and audio tapes, and is to send the original photographic exhibits and original audio or video tapes to the Supreme Court without a special request.

Rules 11(e) and (f) follow Fed.R.App.P. 11(c) and (g).

[Comment amended May 23, 2002; amended effective June 27, 2002; amended effective July 1, 2009.]

JUDICIAL DECISIONS

Court reporters.
Payment of fees and expenses denied.
Prepayment of fees.

Court reporters.

Suit against court reporter for failure to prepare transcript was properly dismissed, because, although the reporter was not entitled to quasi-judicial immunity, the court reporter's duty to prepare and file the transcript did not arise until the party had paid in full the estimated costs of appeal. Vinson v. Roth-Roffy, 829 So. 2d 1250 (Miss. Ct. App. 2002).

Where reason for delay in appeal was almost exclusively due to court reporter, defendant on remand would be allowed to raise issue that his ability to defend himself was prejudiced by denial of speedy appeal and that State deliberately engaged in oppressive conduct. Lanier v. State, 684 So. 2d 93 (Miss. 1996).

Payment of fees and expenses denied.

Decedent's wife was not entitled to attorney's fees and expenses on appeal because in asserting her claim to attorney's fees and expenses, the wife failed to cite any relevant statutory law, caselaw, or rules; because the decedent's daughter asserted a nonfrivolous issue on appeal, and because the wife failed to cite relevant authority to support her claim, her request for attorney's fees and expenses on appeal was denied. Chester v. Labasse (In re Estate of Labasse), 242 So. 3d 167 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 70, 2018 Miss. LEXIS 192 (Miss. May 3, 2018).

Prepayment of fees.

Guardian ad litem fee under M.R.C.P. Rule 17(d) was not a "cost of preparation of the record on appeal" under subdivision (b)(1) of this rule, and therefore prepayment of fee was not required for processing of appeal to supreme court. In re Newsom, 536 So. 2d 1 (Miss. 1988).

ATTORNEY GENERAL OPINIONS

Unless the Supreme Court establishes applicable retention schedules in accordance with Section 25-59-17, before destroying a designated record the chancery clerk must seek and receive an order from the Supreme Court approving its destruction. Creekmore, Jan. 6, 2005, A.G. Op. 05-0624.

Rule 12. Transmission of original item from the trial court.

Any party to an appeal or any justice of the Supreme Court or judge of the Court of Appeals may request that an original of any writing, document or exhibit in the record on appeal be delivered to the appropriate appellate court. The request shall be made to the clerk of the Supreme Court. Upon receipt of such request, the clerk of the Supreme Court shall request the original from the trial court clerk. The clerk of the trial court shall photocopy the original and forward the original to the clerk of the Supreme Court, retaining the photocopy in the clerk's office. Following disposition in the Supreme Court or the Court of Appeals, the clerk of the Supreme Court shall return the original to the clerk of the trial court.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 12 replaced Miss.Sup.Ct.R. 12, embracing proceedings in the Court of Appeals. 644-647 So.2d XLVI (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 12 is based on Ala.R.App.P. 13 and former Mississippi practice. This Rule applies only to matters designated as a part of the record and is not a substitute for a motion to supplement the record pursuant to Rule 10(e).

Rule 13. Docketing the appeal and filing the record.

(a) *Docketing the appeal.* Upon receipt of the copy of the notice of appeal transmitted by the clerk of the trial court pursuant to Rule 3(d), the clerk of the Supreme Court shall enter the appeal upon the docket and assign it a docket number which includes the designation TS to serve as a tracking number. The docket number shall remain the same throughout the appellate process regardless of whether the case is assigned to the Court of Appeals or is retained by the Supreme Court. An appeal shall be docketed under the title "__________, Appellant(s) v. __________, Appellee(s)," identifying appellant(s) and appellee(s).

(b) *Filing the record, partial record, or certificate.* Upon receipt of the record transmitted pursuant to Rule 11(d), or the partial record transmitted pursuant to Rule 11(f), the clerk of the Supreme Court shall file it, replace the TS designation with a designation to indicate the kind of case it is (e.g., KA for criminal appeal, CA for civil appeal, etc.) and immediately give notice to all parties of the date on which it was filed.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 13 replaced Miss.Sup.Ct.R. 13, embracing proceedings in the Court of Appeals. Rule 13 was further amended to effect technical changes concerning docketing and tracking appeals. 644-647 So.2d XLVI-XLVII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 13 follows Fed.R.App.P. 12. Rule 45 sets forth other duties of the clerk. Docketing the appeal at the time the notice of appeal is filed gives the Supreme Court greater control over the appellate process. It also recognizes the principle that perfection of the appeal by filing the notice vests jurisdiction over the case in the Supreme Court, except as otherwise provided by statute or rule.

Rule 14. Findings of fact and calculations during the course of an appeal.

(a) *Finding of fact by the Supreme Court.* The Supreme Court (and the Court of Appeals on those cases assigned to it by the Supreme Court) may try and determine all issues of fact which may arise out of any appeal before it and which are necessary to the disposition of the appeal, and, to this end, may, by order in each case, prescribe in what way evidence may be produced before it on the issue.

(b) *Finding of fact by the trial court.* In the event the Supreme Court or the Court of Appeals so directs, the trial court may determine all issues of fact which may arise out of any appeal submitted to the trial court for a determination, and which may be necessary for the disposition of cases on appeal.

(c) *Calculations.* When a party relies on an error in the calculation of interest or damages as a reason for altering a judgment, a true calculation shall be presented to the appellate court, in writing and figures, with a certificate by a certified public accountant not interested in the cause, that the calculation is correct; and no such error will be noticed unless so presented to the Supreme Court or the Court of Appeals.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 14 replaced Miss.Sup.Ct.R. 14, embracing proceedings in the Court of Appeals. 644-647 So.2d XLVII-XLVIII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 14(a) is a restatement of the authority to determine facts arising out of the appeal itself vested in the Court by Miss. Code Ann. § 9-3-37 (1972).

Subdivisions (b) and (c) carry forward procedures, previously followed by the Court, except that (c) now requires that a certified public accountant prepare the certificate.

Rule 15. Mandamus to require trial court decision.

(a) When a trial judge in a civil case takes under advisement a motion or request for relief which would be dispositive of any substantive issues and has held such motion or request under advisement for sixty (60) days, the plaintiffs and the defendants shall each within fourteen (14) days thereafter submit a proposed order or judgment to the trial judge and shall forward to the Administrative Office of Courts, the trial court clerk and the opposing parties true copies thereof with a statement setting forth the style and number of the case, the names and addresses of the judge and of all parties and the date on which such motion or request was taken under advisement. On receipt of such proposed orders and notices, the Administrative Office of Courts shall calendar them and notify the trial judge and the trial court clerk of the filing. At any time thereafter that an order or judgment is entered on the motion or request for relief, the plaintiffs and the defendants shall, in writing, promptly notify the Administrative Office of Courts and the opposing parties of the date of entry of the decision; copies of such notification shall be sent to the judge and the trial court clerk. If no written notice of a decision is received by the Administrative Office of Courts within six (6) months from the date the case was taken under advisement, the Administrative Office of Courts shall confirm with the trial court clerk that no order or judgment has been entered and notify the Supreme Court. The Administrative Office of Courts will forward copies of its notification to the trial judge and parties and shall advise the judge and counsel that they are to respond to the notice within a specified period. The

Supreme Court shall treat such notification as the filing of an application for a writ of mandamus by all the parties to the action and shall proceed accordingly. The notice of the Administrative Office of Courts of the time within which to respond shall satisfy the requirements of M.R.A.P. 21(d).

(b) The trial judge, not later than thirty (30) days prior to the expiration of the six (6) months from the date the case was taken under advisement, for just cause shown, may apply in writing to the Supreme Court for additional time beyond said six (6) months in which to enter a decision. Concurrently, the judge shall provide a copy of such application to each of the parties. (Amended June 14, 1996; amended effective October 17, 2002.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 14, 1996, Rules 15(a) and (c) were amended to provide that failure to timely file an application for a writ of mandamus will not result in dismissal when the failure is caused by excusable neglect and dismissal will result in manifest injustice. 673-678 So.2d XXXV (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 15 replaced Miss.Sup.Ct.R. 15. 644-647 So.2d XLVIII-XLIX (West Miss.Cases 1994).

[Adopted August 21, 1996; amended April 17, 1997; July 1, 1998; amended effective October 17, 2002.]

COMMENT

This rule recognizes the importance of prompt disposition of matters submitted to the courts for decision and is in accord with M.R.C.P. 1 in its dictate that the rules be construed to secure just, speedy and inexpensive determination of actions, and with Section 3A(5) of the Code of Judicial Conduct which requires that judges promptly dispose of the business of the courts.

In its former version, Rule 15 applied where a judge failed to render a decision "on a motion or request for relief which would be dispositive of all the claims or the rights and liabilities of all the parties." As revised, the rule is now applicable to instances wherein no decision has issued on motions or requests for relief "which would be dispositive of any substantive issues."

The rule requires the Administrative Office of Courts to invite the trial judge and parties to respond to its notification of a matter having been held under advisement and to set a specified time during which such responses shall be filed with the Supreme Court. This satisfies the requirement of M.R.A.P. 21(d) requiring an opportunity for the judge and parties to respond to a petition for writ of mandamus.

The notification to the Administrative Office of Courts of matters taken under advisement is mandatory and the parties are not at liberty to disregard the duty. This rule provides a mechanism to facilitate disposition of matters as promptly as fair consideration of the issues allows. The judge may and is expected to seek additional time where just cause is found for further deliberation.

[Amended effective October 17, 2002.]

JUDICIAL DECISIONS

In general.

An appellate court, as a court of error correction, can only find error in the decisions a lower court has made — an appellate court cannot find error in the failure to make a decision. If a lower court has not yet made a decision, the only assistance the appellate court may provide is mandamus — an order by the Supreme Court of Mississippi to make a ruling, but the appellate court cannot reverse the absence of a ruling through an appeal. James v. James, 135 So. 3d 188 (Miss. Ct. App. 2013).

Husband did not file his notice of dismissal until after learning of the special chancellor's appointment, he never ceased to pay the child support ordered in the 1994 temporary decree and only ceased paying the entirety of the alimony in approximately March of 1999, the same month he received notice the Supreme Court had denied his motion to reconsider the special appointment; the husband never acted like an individual who thought the temporary decree had dissolved until he knew for a fact that it had not. Franklin v. Franklin, 864 So. 2d 970 (Miss. Ct. App. 2003).

Failure to object at trial meant that the bank customers waived the right to raise the issue that the trial court had erred in allowing the bank to argue the case on a different set of facts. Whitefoot v. BancorpSouth Bank, 856 So. 2d 639 (Miss. Ct. App. 2003), writ of certiorari denied by 866 So. 2d 473, 2004 Miss. LEXIS 206 (Miss. 2004), writ of certiorari denied by 543 U.S. 833, 125 S. Ct. 148, 160 L. Ed. 2d 52, 2004 U.S. LEXIS 5851, 73 U.S.L.W. 3207 (2004).

Rule 16. Jurisdiction of the Supreme Court and the court of appeals; assignment of cases to the Court of Appeals.

(a) *Jurisdiction of the Supreme Court.* The Supreme Court shall have such jurisdiction as is provided by Constitution and statute. All appeals from final orders of trial courts shall be filed in the Supreme Court and the Supreme Court shall assign cases, as appropriate, to the Court of Appeals.

(b) *Jurisdiction of the Court of Appeals.* Pursuant to Miss. Code Ann. § 9-4-3 (Supp. 1994), the Court of Appeals shall have only such jurisdiction as is conferred upon it by assignment of appeals and other proceedings by the Supreme Court. The Supreme Court may, by statute, assign any appeal to the Court of Appeals except appeals in cases involving:

(1) the imposition of the death penalty;
(2) utility rates;
(3) annexations;
(4) bond issues;
(5) election contests; or
(6) a trial court's holding a statute unconstitutional.

(c) *Transfer of case or matter to Court of Appeals.* In matters which could be properly handled in either court but which are originally retained by the Supreme Court, that Court may, at any time prior to the issuance of an opinion or ruling disposing of a case or matter before it, transfer the case to the Court of Appeals if the Court determines that expeditious disposition requires the case be decided by the Court of Appeals.

(d) *Initial assignment to the Court of Appeals.* The clerk of the Supreme Court, subject to the directions of the Court, will designate those cases retained by that Court for disposition and those assigned to the Court of Appeals.

Although any case, other than those which the Supreme Court is statutorily required to retain, may be assigned to the Court of Appeals, the Supreme Court will retain all cases involving attorney discipline, judicial performance, and certified questions from a federal court. The Court will also ordinarily retain cases involving:

(1) a major question of first impression;

(2) fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the Supreme Court;

(3) substantial constitutional questions as to the validity of a statute, ordinance, court rule, or administrative rule or regulation;

(4) issues upon which there is an inconsistency in the decisions of the Court of Appeals or of the Supreme Court or conflict between the decisions of the two courts.

In assigning matters to the Court of Appeals, the Supreme Court may take into account the relative workloads of the Supreme Court and the Court of Appeals. The Supreme Court may also, by order, provide that cases falling within identified categories, defined by subject matter or other general criteria, shall be designated for immediate transfer to the Court of Appeals or retention by the Supreme Court. Except for those cases which the Supreme Court is required by statute to retain, a party has no right to have his or her case heard by the Supreme Court.

(e) *Assignment decision final and not subject to reconsideration on petition of party or Court of Appeals.* After entry of an order assigning a case to the Court of Appeals, neither the Court of Appeals nor any party may file any pleading or certification seeking reassignment. Any reassignment may take place only on the motion of the Supreme Court. (Amended effective October 15, 1998.)

JUDICIAL DECISIONS

In general.

Where a justice court judge acted to cause a complaining officer to not show up for trial so that drunk driving charges could be dismissed for failure to prosecute, the Mississippi Supreme Court held, under Miss. Const. Art. 6, § 177A, that the offense involved moral turpitude, and imposed a 30-day suspension upon the judge. Miss. Comm'n on Judicial Performance v. Sanford, 941 So. 2d 209 (Miss. 2006).

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, the Supreme Court promulgated Miss.R.App.P. 16, entitled "Jurisdiction of the Supreme Court and the Court of Appeals; Assignment of Cases to the Court of Appeals." Miss.Sup.Ct.R. 16 had been designated reserved. 644-647 So.2d XLIX-XLI (West Miss.Cases 1994).

[Adopted August 21, 1996.]

Effective September 25, 1995, Rule 17(b) was amended to make clear that the time for filing a petition for writ of certiorari begins to run with the entry of the judgment of the Court of Appeals on the required petition for rehearing, and to effect unrelated technical changes. 660-662 So.2d LXXXIII (West Miss. Cases 1995).

COMMENT

M.R.A.P. 16, dealing with the jurisdiction of the Supreme Court and the Court of Appeals, has no counterpart in the former Supreme Court Rules. The rule specifies the cases which must, pursuant to Miss. Code Ann. § 9-4-3-(1) (Supp. 1994), be decided by the Supreme Court. The rule further provides that all matters involving bar discipline and judicial performance will be decided by the Supreme

Court, as will certified questions from federal courts. The rule makes it clear that any other case may, in the discretion of the Supreme Court, be assigned to the Court of Appeals. The rule sets forth criteria for retention of other cases in the Supreme Court, but the rule suggests that the Supreme Court will not ordinarily exercise its discretion to retain a case unless it is apparent that the case presents an issue which is of such broad and fundamental public importance that the Supreme Court must ultimately be involved in its disposition or unless the issue presented is such that its resolution is highly likely to result in significant development of the law. The rule does not preclude the assignment of cases involving law development to the Court of Appeals but provides that such assignments will not be routinely made.

Section (d) provides that a party has no right to have his case heard by the Supreme Court, and section (a) provides that the Court will not entertain any pleading which seeks to have a case reassigned to the Supreme Court from the Court of Appeals.

Rule 17. Review in the supreme court following decision by the Court of Appeals.

(a) *Decisions of Court of Appeals reviewable by writ of certiorari.* A decision of the Court of Appeals is a final decision which is not reviewable by the Supreme Court except on writ of certiorari. Review on writ of certiorari is not a matter of right, but a matter of judicial discretion. The Supreme Court may grant a petition for writ of certiorari on the affirmative vote of four of its members and may, by granting such writ, review any decision of the Court of Appeals. Successive review of a decision of the Court of Appeals by the Supreme Court will ordinarily be granted only for the purpose of resolving substantial questions of law of general significance. Review will ordinarily be limited to:

(1) cases in which it appears that the Court of Appeals has rendered a decision which is in conflict with a prior decision of the Court of Appeals or published Supreme Court decision;

(2) cases in which it appears that the Court of Appeals has not considered a controlling constitutional provision;

(3) cases which should have been decided by the Supreme Court because:

(i) the statute or these rules require decision by the Supreme Court, or

(ii) they involve fundamental issues of broad public importance requiring determination by the Supreme Court.

Notwithstanding the presence of one or more of these factors, the Supreme Court may decline to grant a petition for certiorari for review of the decision of the Court of Appeals. The Court may, in the absence of these factors, grant a writ of certiorari.

(b) *Time for filing petition for writ of certiorari; content and length of petition.* A party seeking review of a judgment of the Court of Appeals must first seek review of that court's decision by filing a motion for rehearing in the Court of Appeals. If a party seeks review in the Supreme Court, a petition for a writ of certiorari for review of the decision of the Court of Appeals must be filed in the Supreme Court and served on other parties within fourteen (14) days from the date of entry of judgment by the Court of Appeals on the motion for rehearing, unless extended upon motion filed within such time. An untimely petition may be summarily dismissed by a single justice of the Supreme Court. The petition for writ of certiorari may not exceed ten (10) pages in length and must briefly and succinctly state the precise basis on which the party seeks review by the Supreme Court, and may include citation of authority in support of that contention. No citation to authority or argument may be incorporated into the petition by reference to another document. The petitioner must file an original and ten (10) copies of the petition. The Petitioner must attach, as appendices to the petition, a copy of the opinion and judgment of the Court of Appeals, and a copy of the motion for rehearing filed in the Court of Appeals.

(c) *Briefs and oral argument not permitted.* Neither briefs nor oral argument shall be allowed in support of a petition for a writ of certiorari, unless requested by the Supreme Court.

(d) *Response to petition for writ of certiorari.* Within seven (7) days after the filing of a petition for a writ of certiorari, any other party to the case may, but need not, file and serve an original and 10 copies of a written response in opposition to the petition. The response may not exceed ten (10) pages in length. No citation to authority or argument may be incorporated into the response by reference to another document. The respondent may attach, as an appendix, his or her response to the motion for rehearing filed in the Court of Appeals.

(e) *Decision by the Supreme Court.* The Supreme Court shall act upon a petition for a writ of certiorari within ninety (90) days of the filing of the response provided for in subsection (d) above, or, should no response be filed, the final date upon which such response could be filed. The failure of the Court to issue such a writ within that period shall constitute a rejection of the petition and the petition shall be deemed denied.

(f) *Reconsideration not permitted.* Neither an acceptance nor a rejection of a petition for certiorari shall be subject to further pleading by a party for rehearing or reconsideration. Prior to final disposition, the Supreme Court may, on its own motion, find that the petition for certiorari was improvidently granted and may dismiss the certiorari proceeding.

(g) *Notification of grant of petition for certiorari.* Upon the Supreme Court's disposition of a petition for a writ of certiorari, the clerk of the Supreme Court shall immediately notify the parties.

(h) *Supplemental briefs; record on review.* Upon notice of a grant of certiorari, any party may, whether requested by the Court or not, within 10 days, file an original and 10 copies of a supplemental brief not to exceed 10 pages. No additional time or pages shall be allowed for supplemental briefs. The Supreme Court may require supplemental briefs on the merits of all or some of the issues for review. The Supreme Court's review on the grant of certiorari shall be conducted on the record and briefs previously filed in the Court of Appeals and on any supplemental briefs filed. The Supreme Court may limit the question on review.

(i) *Oral argument.* Oral argument shall not be allowed, unless requested by the Supreme Court. The Court may require oral argument.

(j) *Mandate.* The timely filing of a petition for a writ of certiorari shall stay the issuance of the mandate of the Court of Appeals. Upon the issuance of an order of denial of a petition for a writ of certiorari or upon the expiration of the period allowed for the Supreme Court's consideration of such a petition, the clerk of the Supreme Court shall issue the mandate, pursuant to M.R.A.P. 41.

(k) *Motions to dismiss or withdraw opinion filed after petition for writ of certiorari.* Where motions to dismiss an appeal or motions to withdraw or alter an opinion of the Court of Appeals are filed after a petitions for writ of certiorari have been filed in the Supreme Court, the proceedings on the petitions for writ of certiorari will be suspended and the cases will be remanded to the Court of Appeals to address the motions. After the Court of Appeals has addressed the motions, the matter shall proceed in the Supreme Court, and, if the motion to dismiss the case has been granted, the petition may be dismissed as moot. (Amended February 10, 1995; amended effective September 28, 1995; amended June 21, 1996; amended October 15, 1998, effective from and after January 1, 1999; amended June 24, 1999; amended effective January 3, 2002; amended April 18, 2007.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 21, 1996, Rule 17 (e) was amended to enlarge the period for acting on certiorari petitions from sixty to ninety days. In addition, Rule 17(b) was amended to redesignate rehearing "petitions" as "motions," and Rule 17 (d) was amended to consistently designate certiorari "petitions" as "petitions" and effect another technical change. 673-678 So.2d XXXIX-XL (West Miss. Cases 1996).

Effective September 25, 1995, Rule 17(b) was amended to make clear that the time for filing a petition a writ of certiorari begins to run with the entry of the judgment of the Court of Appeals on the required petition for rehearing, and to effect unrelated technical changes. 660 So.2d LXXXIII-LXXXIV (West Miss.Cases 1995).

Effective February 10, 1995, Rule 17(j) was amended to state that the clerk shall issue the mandate in accordance with Miss.R.App.P. 41. 648 So.2d XXXII (West Miss.Cases 1995).

Effective January 1, 1995, the Supreme Court promulgated Miss.R.App.P. 17, entitled "Review in the Supreme Court Following Decision by the Court of Appeals." Miss.Sup.Ct.R. 17 had been designated reserved. 644-647 So.2d LI-LIII (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1997; July 1, 1998.]

COMMENT

Rule 17 provides a procedure by which parties may seek Supreme Court review of a judgment of the Court of Appeals. Section (a) follows Miss. Code Ann. § 9-4-3(2)(Supp. 1994) which provides that "[d]ecisions of the Court of Appeals are final and are not subject to review by the Supreme Court, except by [grant of] writ of certiorari . . . by the affirmative vote of four (4) of [the Supreme Court's] members."

JUDICIAL DECISIONS

Discretionary review.
Jurisdiction.
Motion for rehearing.
Res judicata.
Statement of issues.

Discretionary review.

Supreme Court of Mississippi would not consider defendant's Miss. R. App. P. 17 petition for a writ of certiorari because defendant's motion for rehearing, filed more than two weeks past the deadline, was untimely under Miss. R. App. P. 40, and defendant did not argue that there was good cause to suspend the rule under Miss. R. App. P. 2(c). McCalpin v. State, 166 So. 3d 24 (Miss. 2013).

Argument of petitioner, an inmate, that the supreme court erred by denying his petition for writ of certiorari as he was denied his procedural due-process rights under federal and state law was without merit. Miss. R. App. P. 17(a) stated that review on writ of certiorari was a matter of judicial discretion and there was simply no right to review on a writ of certiorari. Conway v. State, 48 So. 3d 588 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 627 (Miss. 2010).

Jurisdiction.

Certiorari is not a matter of right, and is to be considered only after petitioner has sought review of Court of Appeals decision by way of a petition for rehearing in that court. Harris v. State, 704 So. 2d 1286 (Miss. 1997), cert. denied, 522 U.S. 827, 118 S. Ct. 90, 139 L. Ed. 2d 47 (1997).

Motion for rehearing.

Subsection (b) of this rule does not require that a successive motion for rehearing be filed by the party aggrieved by a decision issued on rehearing. Carter v. State, 754 So. 2d 1207 (Miss. 2000).

Res judicata.

Defendant, who had previously appealed her murder conviction, was given a single opportunity to litigate before the Mississippi Supreme Court; defendant could not relitigate issues already raised. Wade v. State, 802 So. 2d 1023 (Miss. 2001).

Statement of issues.

Petition for writ of certiorari which presented no issues, but instead made general statements that petition involved issues of general interest to criminal defense bar and prosecutors, did not comply with this rule and was denied. Jones v. State, 701 So. 2d 805 (Miss. 1997).

Practice of filing pro forma petition which fails to raise issues for consideration and fails to state precise basis on which party seeks review is unprofessional and risks imposition of sanctions. Skinner v. State, 700 So. 2d 1183 (Miss. 1997).

Rule 18. [Omitted].

APPEALS FROM AGENCY RESPONSIBLE FOR UTILITY RATES

Rule 19. Appeals from the public service commission.

Appeals from an administrative agency charged by law with the responsibility for approval or disapproval of rates sought to be charged the public by any public utility are governed by statutes enacted pursuant to the Mississippi Constitution of 1890, art. 6, § 146.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 19 replaced Miss.Sup.Ct.R. 19. 644-647 So.2d LIII-LIV (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 19 was amended to delete references to repealed statutes and material concerning the transition from statutory procedures to Rule practice, and to effect attendant technical changes. 632-635 So.2d LI-LII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Legislative authority to provide for direct appeals to the Supreme Court from certain decisions of the Mississippi Public Service Commission was established by amendment to § 146 of the Mississippi Constitution of 1890. That amendment was ratified by the electorate on November 8, 1983, and was inserted as a part of the Constitution on January 3, 1984. Pursuant to the authority granted by § 146, the legislature enacted Miss. Code Ann. § 77-3-72 (1991) which establishes procedures for such direct appeals.

Under § 77-3-72, final orders in any utility rate proceeding involving a filing for a rate change are appealed by filing an "appeal" comparable to the Rule 3 notice of appeal. The "appeal," however, is filed with the clerk of the Supreme Court, not with the Commission, and it must "state briefly the nature of the proceedings before the commission, and shall specify the order complained of." Miss. Code Ann. § 77-3-72(1) (1991). The appeal is on the entire record unless the parties stipulate to the contrary. Miss. Code Ann. § 77-3-72(2) (1991). The statutes do not require a cost estimate or prepayment of costs. The appealing party must, however, pay the fees required by the clerk of the Supreme Court under Miss. Code Ann. § 25-7-3 (1991). The statutes provide for collection of rates under bond in certain cases. Miss. Code Ann. § 77-3-72(3), (4) (1991).

Where the statute is silent, these rules govern the appeal. Applicable rules in rate appeals include rules concerning dismissal for failure to prosecute and other sanctions, Rule 2; designation, correction, and preparation of the record, Rule 10 and Rule 11; writs of mandamus and other extraordinary writs, Rule 21(c); filing and service, Rule 25; computation and extension of time, Rule 26; motions, Rule 27; brief and record excerpts, Rules 28-32; and other rules generally applicable to civil cases, Rules 33-38, 40-47.

Appeals from Commission decisions in other cases are to the chancery court of the judicial district in which the principal place of business of the utility in the State of Mississippi is located, Miss. Code Ann. § 77-3-67(1) (1991), or to the circuit court of the first judicial district of Hinds County, Miss. Code Ann. § 77-1-45 (1991). Appeals from the chancery court to the Supreme Court are governed by these rules and the bond provisions of Miss. Code Ann. § 77-3-71 (1991). Appeals from the circuit court to the Supreme Court are governed by these rules and the bond provisions of Miss. Code Ann. § 77-1-47 (1991).

CERTIFIED QUESTIONS FROM FEDERAL COURTS

Rule 20. Certified questions from federal courts.

(a) *When certified.* When it shall appear to the Supreme Court of the United States or to any United States Court of Appeals that there may be involved in any proceeding before it questions or propositions of law of this state which are determinative of all or part of that cause and there are no clear controlling precedents in the decisions of the Mississippi Supreme Court, the federal court may certify such questions or propositions of law of this state to the Mississippi

Supreme Court for rendition of a written opinion concerning such questions or propositions of Mississippi law. The Supreme Court may, in its discretion, decline to answer the questions certified to it.

(b) *Method of invoking rule.* The provision of this rule may be invoked by the federal court upon its own motion or the suggestion or motion of any interested party when approved by the federal court.

(c) *Contents of certificate.* The certificate shall contain the style of the case, a statement of facts showing the nature of the cause and the circumstances out of which the questions or propositions of law arise, and the question of law to be answered.

(d) *Preparation of certificate.* The certificate shall be certified to the Supreme Court by the clerk of the federal court and under its official seal. The Supreme Court may, in its discretion, require the original or copies of all or any portion of the record before the federal court to be filed with said certificate where, in its opinion, such record may be necessary in the determination of the certified question.

(e) *Costs.* The costs of the proceedings shall be equally divided between the parties unless otherwise ordered by the Supreme Court.

(f) *Briefs and argument.* The appellant or petitioner in the federal court shall submit the initial brief on the question certified. All briefs, arguments, and other proceedings shall be conducted according to these Rules. For the purposes of Rule 28, additional briefing will be upon directive of the Supreme Court. (Adopted governing matters filed on or after January 1, 1995; amended effective June 27, 2002.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 20 replaced Miss.Sup.Ct.R. 20. 644-647 So.2d LIV-LV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 20 continues the practice of accepting certified questions from federal courts. Acceptance of a question so certified is discretionary with the Court. The Court reserves the right to rephrase certified questions, *Government Employees Ins. Co. v. Brown*, 446 So. 2d 1002, 1006 (Miss. 1984), and has said it will restrict its review under this rule "to the performance when properly requested of the function of declaring in general terms the controlling rules" of state law, and not the application of law to fact. *Boardman v. United Services Auto Ass'n*, 470 So. 2d 1024, 1031 (Miss. 1985). The practice of the United States Court of Appeals for the Fifth Circuit in certifying questions is discussed in *In Re McClintock*, 558 F. 2d 732, 733 nn. 2-5 (5th Cir. 1977), and J. Brown, *Certification — Federalism in Action*, 7 Cumb. L. Rev. 455 (1977) (tracing development of certification doctrine).

JUDICIAL DECISIONS

In general.
Certification of questions relating to retaliatory discharge.
Certification of questions relating to statutory noneconomic damages.
Certification of questions relating to wrongful discharge.

In general.

In an issue certified to the Mississippi Supreme Court pursuant to Miss. R. App. P. 20(a), the court interpreted the application of the limitations period of Miss. Code Ann. § 15-1-36, to be tolled until plaintiff patient, through reasonable diligence, learned of the alleged negligence of her treating physician, and not just learned of her injury. Huss v. Gayden, 991 So. 2d 162 (Miss. 2008).

As the issue of whether an insurance policy containing an "other insurance" clause can be required to drop down and pay first-dollar coverage ahead of defendant has not been addressed by the Mississippi Supreme Court, the standard for certification under Miss. R. App. P. 20(a), has been met. Nat'l Union Fire Ins. Co. v. Miss. Ins. Guar. Ass'n, 507 F.3d 309 (5th Cir. 2007).

Certification of questions relating to retaliatory discharge.

Questions were certified to the Supreme Court of Mississippi under Miss. R. App. P. 20 as to whether state law permitted a retaliatory discharge claim against an employer and supervisor as an exception to the employment at will doctrine when discharge was for reporting a co-employee's illegal acts that related to the employer's business and whether a supervisor could be held liable when he ratified the discharge during the scope of his employment. DeCarlo v. Bonus Stores, Inc., 512 F.3d 173 (5th Cir. 2007), affirmed in part and vacated in part by, remanded by 289 Fed. Appx. 735, 2008 U.S. App. LEXIS 17375 (5th Cir. Miss. 2008).

Certification of questions relating to statutory noneconomic damages.

High court declined to answer a certified question regarding the constitutionality of Miss. Code Ann § 11-1-60(2), which generally limited noneconomic damages to $ 1 million, because it would require speculation and guesswork to determine what portion of the jury's $ 4 million general verdict represented noneconomic damages. Sears v. Learmonth, 95 So. 3d 633 (Miss. Aug. 23, 2012).

Certification of questions relating to wrongful discharge.

Court certified to the Mississippi Supreme Court question of whether in Mississippi employer could be liable for wrongful discharge of employee for storing firearm in locked vehicle on company property in manner that was consistent with Miss. Code Ann. § 45-9-55 because the issue presented an important and determinative question of state law that had not been addressed by Mississippi courts. Swindol v. Aurora Flight Scis. Corp., 805 F.3d 516 (5th Cir. 2015).

RESEARCH REFERENCES

ALR. Construction and Application of Uniform Certification of Questions of Law Act. 69 A.L.R.6th 145.

Rule 21. Writs of mandamus and prohibition directed to a judge or judges and other extraordinary writs.

(a) *Writs and process, supreme court.* The Supreme Court shall issue all writs and process necessary for the exercise and enforcement of its appellate jurisdiction and may enforce its mandates by fine and other appropriate sanctions.

(b) *Writs and process, court of appeals.* The Court of Appeals shall issue writs and other process necessary for the exercise and enforcement of its jurisdiction, but a writ, order, or other process in any appeal not transferred to the Court of Appeals by the Supreme Court shall be of no effect.

(c) *Mandamus or prohibition to a judge or judges; petition for writ; service and filing.* Application for a writ of mandamus or of prohibition directed to a judge or judges shall be made by filing a petition with the clerk of the Supreme Court with proof of service on the judge or judges and on all parties to the action in the trial court.

A petition for writ of mandamus, writ of prohibition, or other extraordinary writ shall not bear the name of the judge or judges, but shall be entitled, In re: ____________, Petitioner. To the extent that relief is requested of a particular judge, unless otherwise ordered, the judge shall be represented pro forma by counsel for the party opposing the relief, who shall appear in the name of the party and not that of the judge, except that where the petition relates to a criminal case, the judge shall not be represented by the District Attorney's office but shall either represent himself/herself or be represented by the office of the Attorney General and/or private counsel retained by the judge. The petition shall contain a statement of the facts necessary to an understanding of the issues presented by the application and why it was denied by the trial court; a statement of the issues presented and of the relief sought; a statement of the reasons why the writ should issue; and certified copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition. Upon receipt of the prescribed docket fee, the clerk of the Supreme Court shall docket the petition and submit it to the appellate court to which the case has been assigned.

(d) *Denial; notice directing answer.* If the appellate court is of the opinion that the writ should not be granted, it will deny the petition without requesting an answer. Otherwise, the clerk of the Supreme Court will issue notice that an answer to the petition be filed by the respondents within the time fixed by the notice. The notice shall be served by the clerk on the judge or judges and on all other parties to the action in the trial court. All parties below, other than the petitioner, shall also be deemed respondents for all purposes. Two or more respondents may answer jointly. The clerk shall advise the parties of the dates on which briefs are to be filed, if briefs are required, and of the date of oral argument. The proceeding shall be given preference over ordinary civil cases. The Supreme Court also may, in its discretion, treat the petition as a petition for permission to appeal under Rule 5 and order such further proceedings as the Court deems appropriate.

(e) *Other extraordinary writs.* Application for extraordinary writs other than those provided for in subdivisions (c) and (d) of this rule shall be made by petition filed with the clerk of the Supreme Court with proof of service on the parties named as respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (c) and (d) of this rule.

(f) *Form of papers; number of copies.* All papers shall be typewritten or printed. Four (4) copies shall be filed with the original, but the court may direct that additional copies be furnished. (Amended effective January 1, 1999.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 21 replaced Miss.Sup.Ct.R. 21 and added new subsections (a) and (b), embracing proceedings in the Court of Appeals. 644-647 So.2d LV-LVII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 21 applies to all requests for remedial writs under Miss. Code Ann. § 9-1-19 (Supp. 1994). The rule was originally modeled on Fed. R. App. P. 21 as modified by 5th Cir. R. 21. With the exception of the writ of mandamus required by Rule 15, a party must seek relief in the trial court before obtaining the extraordinary relief of a remedial writ from the Supreme Court. The rule preserves the Mississippi requirement that papers attached to a petition must be certified. It does not require, however, that the petition be under oath. Petitions will be considered by a panel of the appropriate court rather than by a single justice or judge. In emergency circumstances in which panel consideration would be impractical due to requirements of time, however, a single justice or judge may hear the petition and issue a temporary stay pursuant to Rule 8. A single justice's or judge's decision not to grant a stay may be reviewed by the appropriate court.

The Supreme Court, under Rule 21(b), retains the discretion to treat the petition as a petition for permission to appeal under Rule 5 and to instruct the parties to proceed under that rule. See *In re Brown*, 478 So. 2d 1033 (Miss. 1985) (application for writ treated as emergency appeal).

[Amended effective April 18, 2007.]

JUDICIAL DECISIONS

Attorney general.
Mandamus relief improper.
Writ of prohibition.

Attorney general.

Use of extraordinary writ was not appropriate in Governor's petition to compel Attorney General of Mississippi to perform certain acts and to refrain from performing others, in connection with duties concerning Division of Medicaid. In re Fordice, 691 So. 2d 429 (Miss. 1997).

There was no sufficient legal reason for supreme court to intervene and accept jurisdiction of tobacco companies' request for extraordinary relief in connection with Attorney General's action to recover Medicaid expenditures from companies. In re Corr-Williams Tobacco Co., 691 So. 2d 424 (Miss. 1997).

Mandamus relief improper.

Circuit court erred in issuing the writ of mandamus under Miss. R. App. P. 21 because the justice court judge's decisions to deny any further continuance and to proceed to trial on the misdemeanor DUI charge in petitioner's absence pursuant to Miss. Code Ann. § 99-17-9 were discretionary and appeals from the justice court to the circuit court required a trial de novo, Miss. Code Ann. § 99-35-1 and Miss. Unif. Cir. & County Ct. Prac. R. 12.02; thus, the writ of mandamus was the improper procedural tool to remedy petitioner's grievances regarding the denial of a continuance and proceeding to trial in petitioner's absence and, therefore, the grant of the writ of mandamus was in error pursuant to Miss. Code Ann. § 11-41-1. In re Chisolm, 837 So. 2d 183 (Miss. 2003).

Writ of prohibition.

Notice of appeal and other documents filed by the county did not follow the technical requirements as to the form of applying for a writ prohibition, and the supreme court declined to suspend the requirements because it did not have enough information to determine whether the case presented a convincing argument that an irremedial injustice would occur if county court judges were not prohibited from setting the salaries of the court administrators. Hinds Cty. v. Skinner (in re Appointment & Setting Sala ry for Cty. Court Adm'r & Deputy Court Adm'r), — So. 3d —, 2019 Miss. LEXIS 233 (Miss. June 13, 2019).

Rule 22. Applications for post-conviction collateral relief in criminal cases.

(a) *Filing of Applications.* Applications for post-conviction collateral relief in criminal cases are governed by Miss. Code Ann. § 99-39-1, et seq. (Suppl. 1994) and this Rule 22. If any application fails to comply substantially with the statute, the clerk of the Supreme Court shall give written notice of the default, apprising the party of the nature of the deficiency. If the deficiencies are not corrected within thirty days, the application may be dismissed. Successive applications for post-conviction relief which do not clearly demonstrate an exception to the successive writ bar of Miss. Code Ann. § 99-39-27(9) may subject the filer to sanctions.

(b) *Post-conviction Issues Raised on Direct Appeal.* Issues which may be raised in post-conviction proceedings may also be raised on direct appeal if such issues are based on facts fully apparent from the record. Where the appellant is represented by counsel who did not represent the appellant at trial, the failure to raise such issues on direct appeal shall constitute a waiver barring consideration of the issues in post-conviction proceedings.

(c) *Post-conviction Proceedings Filed by Persons Under Sentence of Death.* Proceedings on post-conviction applications and motions filed by persons under sentence of death shall be governed by this rule. This sub-part (c) shall apply only to such proceedings filed by persons under sentence of death.

(1) Representation by counsel.

(i) The petitioner shall be represented by qualified counsel unless the petitioner has elected to proceed pro se, and the convicting court finds, after a hearing on the record, that the petitioner's election is informed and voluntary.

(ii) Where a petitioner is sentenced to death the Supreme Court shall, immediately after the announcement of the decision on direct appeal, order that the convicting court determine whether the petitioner is indigent and, if so, whether the petitioner desires appointment of counsel for the purpose of post-conviction proceedings. Such order shall be forwarded to the convicting court and the Office of Capital Post-Conviction Counsel upon entry. The Office of Capital Post-Conviction Counsel shall advise the convicting court of the attorney selected to represent the petitioner pursuant to Section 99-39-23 and these rules.

(iii) Should it be determined upon hearing in the convicting court that the petitioner has retained qualified private counsel, the attorney selected by the

Office of Capital Post-Conviction Counsel shall take no further action and shall be discharged. Should it be determined that the petitioner elects to proceed pro se, the attorney selected by the Office of Post Conviction Counsel shall continue to serve, but only as counselor and advisor to the petitioner.

(2) Proceedings pro se.

(i) The petitioner shall be allowed to proceed pro se only upon findings of the convicting court that the petitioner has made an informed and voluntary election to so proceed under the provisions of subpart (1)(i) above. Such an election shall be deemed informed and voluntary only when the petitioner has been advised of the complexity of post-conviction proceedings and the limitations upon issues which may be raised. The court shall advise the petitioner that:

the stringent filing and other deadlines attendant to post-conviction proceedings will not be relaxed for pro se litigants,

ignorance of the law or procedures will not be accepted as an excuse for failure to proceed in accordance with law,

grounds for post-conviction relief, including intervening decisions, are often technical and require knowledge of and skill in the law,

investigation, including discovery and the gathering of evidence can be best pursued by counsel, and incarceration of the petitioner will not be accepted as an excuse for failure to conduct such investigation and gather such evidence,

the court will not relax or disregard the rules of evidence, procedure, or courtroom protocol for the pro se petitioner, and without legal counsel the petitioner's ability to proceed effectively will be hampered, and

a decision to proceed pro se in post-conviction matters usually increases the likelihood of an outcome unfavorable to the petitioner.

(ii) In the event that expenses for litigation are allowed a post-conviction petitioner, they shall be disbursed through the attorney serving as advisor and counselor.

(iii) When the petitioner is proceeding pro se, access to trial and appellate files, prosecution and law enforcement files and the delivery of discovery materials shall be upon such conditions and subject to such restrictions as the conviction court may deem necessary to preserve the integrity and security of the files and materials.

(iv) When the petitioner is proceeding pro se, and the application for leave to file a motion for post-conviction relief is denied, or if the application is granted, relief is denied in the convicting court and such denial is affirmed in the Supreme Court, the attorney appointed as advisor and counselor shall seek appointment of federal habeas corpus counsel in accordance with the provisions of subpart (9) below.

(3) Compensation of appointed counsel and expenses of litigation.

Compensation for attorneys appointed under this section and expenses of litigation shall be governed by Miss. Code Ann. § 99-15-18. Prior to the approval of expenses for litigation, the petitioner shall present to the convicting court, with notice to the Attorney General and an opportunity for the Attorney General to be heard, a request estimating the amount of such expenses as will be necessary and appropriate in the matter, and the court will determine and allow such expenses as are justified upon hearing of the request for expenses. In requesting such expenses, the petitioner shall make a preliminary showing that such expenses are necessary to the presentation of his case and that they relate to positions which may reasonably be expected to be beneficial. To the extent that the court may find that the disclosure of identity of experts or other factual matters may hinder a fair preparation of the petitioner's case, the disclosure thereof may be presented in camera without disclosure to the State. All orders initially allowing litigation expenses shall be subject to review and reconsideration from time to time as the court may find necessary, and payment under such order will be approved only upon the submission of specific detailed invoices and review by the court. Should the court find that such invoices contain information which if disclosed to the State would unfairly disclose information detrimental to the petitioner's fair presentation of his case, the court shall consider those portions in camera without disclosure to the State.

(4) Further matters preliminary to proceedings in the Supreme Court.

(i) An application for post-conviction relief shall not be filed until proceedings on rehearing of the affirmance of the conviction and sentence are final. However, not later than sixty (60) days following the appointment of post-conviction counsel, or the determination that the petitioner is represented by qualified private counsel, or elects to proceed pro se, counsel or the pro se petitioner shall examine the record and preliminarily investigate the case and shall file with this Court a statement that having done so, counsel or the pro se petitioner either finds no issues with potential post-conviction merit or finds that there are issues which are believed to be meritorious. In the event that counsel or the pro se petitioner files a statement indicating that post-conviction review is deemed to be meritorious and that counsel or the pro se petitioner intends to file an application for post-conviction review, execution of the sentence shall be stayed until disposition of post-conviction proceedings.

(ii) Upon appointment of counsel, or the determination that the petitioner is represented by private counsel the petitioner's prior trial and appellate counsel shall make available to the petitioner's post-conviction counsel their complete files relating to the conviction and sentence. The State, to the extent allowed by law, shall make available to post-conviction counsel the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed and the prosecution of the petitioner. If the State has a reasonable belief that allowing inspection of any portion of the files by post-conviction counsel for the petitioner would not be in the interest of justice, the State may submit for inspection by the convicting court those portions of the files so identified. If upon examination of the files, the court finds that such portions of the files could not assist the capital petitioner in investigating, preparing, or presenting a motion for post-conviction relief, the court in its discretion may allow the State to withhold that portion of the files. Discovery and compulsory process may be allowed the petitioner from and after the appointment of post-conviction counsel or the determination that the petitioner is represented by private counselor or is proceeding pro se, but only upon motion indicating the purpose of such discovery and that such discovery is not frivolous and is likely to be helpful in the investigation, preparation or presentation of specific issues which the petitioner in good faith believes to be in question and proper for post-conviction relief, and order entered in the sound discretion of the court. Upon determination that the petitioner has elected to proceed pro se, such files and discovery shall be made available as provided in subsection (2)(iii) above.

(5) Proceedings in the Supreme Court on Application for Leave to Seek Relief in the Convicting Court.

(i) An application for leave to file a motion for post-conviction relief shall be filed in the Supreme Court not later than one hundred eighty (180) days after counsel is appointed or sixty (60) days following denial of rehearing on the direct appeal of the conviction and sentence, whichever is later. An application which is filed after such date is presumed untimely unless the petitioner establishes good cause by showing particularized justifying circumstances. Absent extraordinary circumstances, a petitioner may not establish good cause for untimely filing of an application filed later than ninety-one (91) days after the filing due date hereunder. The failure to file an application within the time allowed hereunder constitutes a waiver of all grounds for relief, excepting from such waiver only those matters which are excepting from res judicata or successive writ bar identified in Section 99-39-27(9).

(ii) The State shall file a response to the application for leave to file a motion for post-conviction relief not later than thirty (30) days following the date the State receives notice of filing of the application. The State may request additional time upon particularized justifying circumstances. The petitioner may file a rebuttal to the State's response within fifteen (15) days following the date the petitioner receives notice of filing of the response. The petitioner may request additional time for rebuttal upon particularized justifying circumstances.

(6) Proceedings in the Convicting Court.

In the event that the application is granted, the Supreme Court shall issue such scheduling orders as it deems appropriate and shall during proceedings in the convicting court monitor such proceedings in order to assure compliance with filing and decision periods established in this section or by order. Such scheduling orders shall require (1) the filing of the motion for post-conviction relief within thirty (30) days following the entry of the order, and, if an evidentiary hearing is to be granted, such hearing to be conducted not more than one hundred eighty (180) days following the filing of the motion for post-conviction relief. The scheduling order shall, in any event, require disposition of all proceedings in the convicting court within two hundred seventy (270) days following the filing of the motion for post-conviction relief. The preparation of the transcript and record of proceedings shall take precedence over all other duties of the court reporter assigned to the post-conviction proceedings in the convicting court, and in any event, such record shall be transcribed within thirty (30) days following the conclusion of such proceedings unless additional time shall be allowed by the Supreme Court.

(7) To the extent that the procedures set out in this rule may conflict with any other rule of procedure or practice, the procedures set out herein shall control in post-conviction proceedings on behalf of petitioners under a sentence of death.

(8) Appeals from the judgments entered under this rule shall proceed as in other appeals from post-conviction decisions of the convicting courts and in accordance with rules established by the Supreme Court.

(9) If after an application for leave to file a motion for post-conviction relief is filed, the petitioner is denied post-conviction relief in this Court, or is denied such relief in the convicting court after grant of an application for leave to file for post-conviction relief in the convicting court and the Supreme Court affirms such denial by the trial court, an attorney, whether appointed under this section or privately retained, shall not later than fifteen (15) days after such denial becomes final in the Supreme Court, move to be appointed as counsel in federal habeas review under 21 U.S.C. Section 848(q) or equivalent provision or, if necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision.

(d) *Standards and Qualifications for Attorneys Appointed to Represent Those Under Sentence of Death in Post-conviction Proceedings.* At least one (1) attorney representing those under a sentence of death seeking post-conviction relief shall have primary responsibility for and personally appear at proceedings, and shall,

(1) Be admitted to practice law in Mississippi, being a member in good standing of the Bar for at least five years immediately preceding the appointment, or admitted pro hac vice pursuant to order entered under M.R.A.P. 46 and being a member in good standing of that attorney's home jurisdiction for a like period immediately preceding the appointment,

(2) Be admitted to practice in the federal courts of Mississippi and before the United States Court of Appeals for the Fifth Circuit, or, in the case of attorneys appearing pro hac vice, admitted to the federal district courts and the circuit court of appeals having jurisdiction in their home areas,

(3) Have practiced for three years, in federal or state court, in at least one of the following areas:

(a) criminal trials or direct appeals before a court of record, and/or

(b) post-conviction or habeas proceedings.

(4) Have not previously represented the capital petitioner in the case either in the trial court or in the direct appeal, unless the petitioner and counsel expressly request continued representation and waive all potential issues that are foreclosed by continued representation,

(5) Have substantial knowledge and understanding of the relevant state and federal law, both procedural and substantive, governing capital cases, including completion of the requisite educational training enumerated in subsection (e), and

(6) Have otherwise demonstrated the necessary proficiency and commitment to zealous advocacy which exemplify the quality of representation appropriate to capital cases.

Provided, however, that with the approval of the trial court, an attorney may be appointed who does not meet the stated qualifications in (1) - (3) upon a showing that the attorney's experience, stature and record in a different type of practice (e.g., civil litigation, academic work, or work for a court or prosecutor) enable the trial court to conclude that the attorney has extensive experience in complex cases substantially equivalent to that of a qualified attorney.

(e) *Education and Training of Attorneys Appointed or Retained to Represent Those Under Sentence of Death in Post-conviction Proceedings.* Effective July 31, 2000, an attorney serving as post-conviction counsel in a case wherein the petitioner is under a sentence of death shall have within one year prior to his appointment or employment successfully completed twelve hours training or educational programs in the area of capital defense through a program accredited by the Mississippi Commission on Continuing Legal Education or by the American Bar Association. (Adopted August 21, 1996; amended June 24, 1999 by order entered that date; amended effective July 27, 2000; amended effective February 10, 2005 to specify that post-conviction issues are to be raised on direct appeal only when they are apparent on the record; amended effective May 31, 2007, to provide for sanctions; amended April 28, 2016; amended effective October 5, 2017; amended effective January 18, 2018.)

Editor's Note — By order dated September 17, 1999, the Supreme Court of Mississippi ordered that, until further order of the Court, the appointment and compensation of counsel in post-conviction proceedings for persons under sentence of death and the allowance of litigation expenses shall be provided in accordance with the following guidelines and considerations.

1. A single attorney can be expected to represent a party seeking post-conviction relief in death sentence cases. However, upon motion, the trial court may make a determination as to whether two attorneys are appropriate, due to unusual circumstances or the complexity of the proceeding, and, if so, order the appointment of two attorneys.

2. In determining compensation for counsel appointed in such matters the trial court shall, in the absence of other applicable statutory or rule provision, consider the provisions of Miss. Code Ann. § 99-15-17 providing for compensation of trial and appellate counsel in death penalty cases and guidance found in *Wilson v. State*, 574 So. 2d 1338 (Miss. 1990). The trial court may retain jurisdiction of such question in order to reconsider and adjust compensation of counsel in the light of statutory or rule provision for compensation of death penalty post-conviction counsel as may be enacted or adopted during the pendency of the proceeding.

3. Prior to the approval of expenses for litigation, the defendant shall present to the trial court, with notice to the State and an opportunity for the State to be heard, a request estimating the amount of such expenses as will be necessary and appropriate in the matter, and the court will determine and allow such expenses as are justified upon hearing of the request for expenses. In requesting such expenses, the defendant shall make a preliminary showing that such expenses are necessary to the presentation of his case and that they relate to positions which may reasonably be expected to be beneficial. To the extent that the court may find that the disclosure of identity of experts or other factual matters may hinder a fair preparation of the defendant's case, the disclosure thereof may be presented in camera without disclosure to the State. All orders initially allowing litigation expenses shall be subject to review and reconsideration from time to time as the court may find necessary, and payment under such orders

will be approved only upon the submission of specific detailed invoices and review by the court. Should the court find that such invoices contain information which if disclosed to the State would unfairly disclose confidential information detrimental to the defendant's fair presentation of his case, the court shall consider those portions in camera without disclosure to the State.

Cross References — Compensation of counsel in post-conviction relief cases involving the death penalty, see Mississippi Code of 1972, § 99-15-18.

Mississippi Capital Defense Litigation Act, see Mississippi Code of 1972, § 99-18-1 et seq.

Mississippi Uniform Post-Conviction Collateral Relief Act, see Mississippi Code of 1972, § 99-39-1 et seq.

Mississippi Capital Post-Conviction Counsel Act, see Mississippi Code of 1972, § 99-39-101 et seq.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 22 replaced Miss.Sup.Ct.R. 22. 644-647 So.2d LVII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 22 incorporates the comprehensive procedure reflected in the Mississippi Uniform Post-Conviction Collateral Relief Act, codified at Section 99-39-1, et seq. of the Mississippi Code. Passed in 1984, the Act requires that when a prisoner's conviction and sentence have been appealed to the Supreme Court, and the appeal is either affirmed or dismissed, the prisoner is to seek leave from that Court before filing a motion for post-conviction collateral relief in the trial court, Section 99-39-7. The motion for leave is governed by Section 99-39-27, and the provisions of these rules that are consistent with that statute. *See, e.g.,* Rules 25, filing and service; 26, computation and extension of time; 27, motions; 28(h), length of briefs; 31(c), number of briefs.

Rule 22(b) allows the appellant to raise post-conviction issues on direct appeal where the issues are fully apparent from the record of the trial, and failure to raise such issues constitutes a waiver. Under this provision, issues such as claims of ineffective assistance of counsel for failure to object to evidence offered by the state or to argument by the state must be raised on direct appeal. Other post-conviction issues which cannot be raised at the time of appeal because they involve actions or inaction outside the record are not waived since they cannot practically be raised without further development or investigation.

If leave to proceed in the trial court is granted, and proceedings take place there pursuant to §§ 99-39-9 to 99-39-23, an appeal from the trial court's decision is governed by these rules except as otherwise stated in § 99-39-25, which makes specific provision for stays or bail pending such an appeal. Statutory provisions are subject to the requirements of Miss. Const. of 1890, art. 3, § 21.

Following the adoption of new legislation in 2000, the rule was further amended to adopt special procedures governing proceedings on applications for leave to file in the trial court and motions for post-conviction relief in the cases of parties under sentence of death. These amendments are designed to implement the legislation, adopted as H.B. 1228 [Laws, 2000, ch. 569] and signed by the Governor on May 22, 2000, effective on July 1, 2000.

[Adopted to govern matters filed on or after January 1, 1995; amended effective January 1, 1999; June 24, 1999; amended effective July 27, 2000; amended effective February 10, 2005; amended effective August 2, 2012.]

JUDICIAL DECISIONS

Construction.
Amendments to rule.
Discovery.
Ineffective assistance of counsel.
Motion denied.
Motion granted.
Procedural bar.
Right to counsel.

Construction.

It was entirely unnecessary for defendant to seek in the intermediate appellate court to reserve all ineffective assistance of counsel claims that were not apparent from the record for post-conviction collateral relief to preserve the claims, because issues which were not fully apparent from the record could not be raised on direct appeal and were not waived by failure to do so. Walker v. State, 262 So. 3d 560 (Miss. Ct. App. 2018), writ of certiorari denied by 260 So. 3d 798, 2019 Miss. LEXIS 42 (Miss. Jan. 24, 2019).

Miss. R. App. P. 22(c), which contains rules governing the filing of petitions for post-conviction relief by defendants who have been sentenced to death, does not apply to successive petitions for post-conviction relief. Accordingly, appellant was not entitled to discovery before filing his successive petition. Brown v. State, 255 So. 3d 141 (Miss. 2017).

Second sentence of Miss. R. App. P. 22(b) intentionally serves a dual purpose; under judicial-economy considerations, a reviewing court presumes that new eyes on appeal, having thoroughly reviewed the trial court proceedings, will know whether or not certain claims, such as those charging ineffective trial assistance, are meritorious. Thus, if an issue or claim is ripe and based on matters fully enveloped within the record, it should be brought during direct appeal pursuant to Miss. R. App. P. 22(b) to avoid the risk of being deemed waived. Archer v. State, 986 So. 2d 951 (Miss. 2008).

Individual's claim that Miss. R. App. P. 22(c) violated his federal and state constitutional rights lacked merit where his mental retardation and ineffective assistance of trial counsel claims were considered on direct appeal and the appellate court had allowed consideration of extraneous material over the state's objections. Branch v. State, 961 So. 2d 659 (Miss. 2007), writ of certiorari denied by 552 U.S. 1150, 128 S. Ct. 1084, 169 L. Ed. 2d 824, 2008 U.S. LEXIS 950, 76 U.S.L.W. 3372 (2008).

Having raised the issue of ineffective assistance of counsel with different counsel on direct appeal then he had during his trial, pursuant to Miss. R. App. P. 22, defendant preserved his right to raise the issue, supported by affidavits, in future post-conviction relief proceedings. Havard v. State, 928 So. 2d 771 (Miss. 2006), writ of certiorari denied by 549 U.S. 1119, 127 S. Ct. 931, 166 L. Ed. 2d 716, 2007 U.S. LEXIS 153, 75 U.S.L.W. 3350 (2007).

Although defendant's case was a direct appeal, he was represented by counsel who did not represent him in the trial court; thus, defendant had to raise his mental retardation and ineffective assistance of counsel issues in his direct appeal or be barred from doing so in subsequent appeals. Therefore, defendant was permitted to proceed with those issues. Branch v. State, 882 So. 2d 36 (Miss. 2004), writ of certiorari denied by 544 U.S. 907, 125 S. Ct. 1595, 161 L. Ed. 2d 282, 2005 U.S. LEXIS 2289, 73 U.S.L.W. 3530 (2005).

The rule did not cut off petitioner's ultimate right to file his post-conviction petition within the one-year limitation set by Miss. Code Ann. § 99-39-5(2). Puckett v. State, — So. 2d —, 2002 Miss. LEXIS 267 (Miss. Aug. 29, 2002), opinion withdrawn by 2002 Miss. LEXIS 429 (Miss. Dec. 12, 2002), opinion withdrawn by, substituted opinion at 834 So. 2d 676, 2002 Miss. LEXIS 389 (Miss. Dec. 12, 2002).

Amendments to rule.

State was not entitled to avail itself of the opt-in structure provided in the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C.S. § 2261, thus reducing the one year limitations period to 180 days for a death row inmate, because it offered no evidence that it had complied with the opt-in structure statutory requirements; mere passage of the Mississippi Capital Post-Conviction Counsel Act, Miss. Code Ann. § 99-39-101 et seq., and promulgation of subsections (d) and (e) to Miss. R. App. P. 22 was not sufficient. Grayson v. Epps, 338 F. Supp. 2d 699 (S.D. Miss. 2004).

To the extent that the 2000 amendments to the rule were remedial, they applied to cases pending at the time of their adoption. Russell v. State, 819 So. 2d 1177 (Miss. 2001).

Discovery.

To the extent that information obtained pursuant to the rule's discovery mechanism is relevant to a petition for post-conviction relief, it must be attached to the petition, at which time the State will have access to it; if the petitioner is able to demonstrate a substantial showing of the denial of a state or federal right and is allowed to proceed to the trial court, the State is allowed access to the full spectrum of civil discovery, which it may employ to prepare and defend its case. Corrothers v. State, 189 So. 3d 612 (Miss. 2015).

Inasmuch as the rule was enacted for the purpose of aiding petitioners for post-conviction relief in meeting the Mississippi Uniform Post Conviction Collateral Relief Act's burden of production, and because the State had no burden prior to filing the petition for post-conviction relief, the exclusion of the State as a beneficiary of discovery under the rule was not a negligent omission but instead was consistent with the supreme court's intent in drafting the rule. Corrothers v. State, 189 So. 3d 612 (Miss. 2015).

Post-conviction relief was denied based on defendant's assertion that he was not allowed to depose certain witnesses; he did not show that it was not frivolous, and it was not likely to help his petition for post-conviction relief. Howard v. State, 945 So. 2d 326 (Miss. 2006), writ of certiorari denied by 552 U.S. 829, 128 S. Ct. 49, 169 L. Ed. 2d 43, 2007 U.S. LEXIS 9278, 76 U.S.L.W. 3157 (2007).

The defendant was entitled to discovery from the state before filing his application for post-conviction relief since such an application must contain specific facts and be accompanied by supporting documentation in order to stand up to judicial review. Russell v. State, 819 So. 2d 1177 (Miss. 2001).

The excessive use of ex parte proceedings on discovery is improper as the state is entitled to resist unwarranted discovery as well as unnecessary awards of investigative expenses. Russell v. State, 819 So. 2d 1177 (Miss. 2001).

Ineffective assistance of counsel.

Because both parties did not stipulate that the record was adequate for the court of appeals to make a finding on direct appeal, the proper inquiry was whether the record affirmatively showed that defendant was denied effective assistance of counsel of constitutional dimensions. Warren v. State, 269 So. 3d 1207 (Miss. Ct. App. 2018).

Trial court properly denied appellant's motion for post-conviction relief because counsel was not ineffective in communicating he plea offer to appellant; appellant failed to demonstrate that he would have accepted the complete terms of any plea agreement, which included implicating his brother and cooperating with the State, since he provided no evidence that he would have been willing to testify against his brother. Wallace v. State, 264 So. 3d 1 (Miss. Ct. App. 2018), writ of certiorari denied by 263 So. 3d 664, 2019 Miss. LEXIS 68 (Miss. Feb. 14, 2019).

Because both defendant and the State of Mississippi did not stipulate that the record was adequate for the appellate court to make a finding on direct appeal as to defendant's claim of ineffective assistance of trial counsel, the proper inquiry for the appellate court was whether the record affirmatively showed that defendant was denied effective assistance of counsel of constitutional dimensions. Lott v. State, 270 So. 3d 49 (Miss. Ct. App. 2018).

Because both of defendant's claims of ineffective assistance of counsel were based on facts fully apparent from the record, the supreme court proceeded to review them. Pace v. State, 242 So. 3d 107 (Miss. 2018).

Defendant's claim of ineffective assistance of counsel was properly before the court of appeals because defendant was being represented on appeal by counsel who did not represent him at trial; thus, defendant was required to present the issue on direct appeal or waive it in any subsequent post-conviction proceedings he could undertake. Harris v. State, — So. 3d —, 2017 Miss. App. LEXIS 525 (Miss. Ct. App. Sept. 5, 2017), affirmed by 2019 Miss. LEXIS 37 (Miss. Jan. 23, 2019).

Defendant's claim of ineffective assistance of counsel was properly before the court of appeals because the claim concerned facts that were fully apparent from the record; the sole question presented was whether trial counsel was ineffective in failing to move for a continuance or mistrial upon learning that the victim had given a written statement to police. which the State did not provide to the defense in discovery. Harris v. State, — So. 3d —, 2017 Miss. App. LEXIS 525 (Miss. Ct. App. Sept. 5, 2017), affirmed by 2019 Miss. LEXIS 37 (Miss. Jan. 23, 2019).

As the issue regarding defendant's ineffective assistance of counsel claim was contingent upon whether certain evidence was direct or circumstantial, the appellate court found the trial record adequate to consider the merits of defendant's claim, even though the State did not stipulate as to the adequacy of the record. Barber v. State, 232 So. 3d 799 (Miss. Ct. App. 2017).

Supreme court addressed defendant's ineffective assistance of counsel claim because the facts and issues upon which defendant relied were succinctly stated in the fully developed record. Swanagan v. State, 229 So. 3d 698 (Miss. 2017).

Defendant's claim of ineffective assistance of counsel was dismissed because the record did not affirmatively indicate that defendant received ineffective assistance of constitutional dimensions, and the parties did not stipulate that the record was adequate to allow the court of appeals to make findings without considering a trial judge's findings of fact. Sanders v. State, 228 So. 3d 888 (Miss. Ct. App. 2017), writ of certiorari denied by 223 So. 3d 787, 2017 Miss. LEXIS 323 (Miss. Aug. 10, 2017).

Defendant's claim that he received ineffective assistance from his trial counsel was dismissed because the record did not affirmatively indicate that defendant received ineffective assistance of constitutional dimensions, and the parties did not stipulate that the record was adequate to allow the court of appeals to make findings without considering a trial judge's findings of fact. Torrey v. State, 229 So. 3d 156 (Miss. Ct. App. 2017).

Defendant was procedurally barred from asserting on appeal that the circuit judge should have recused himself because defendant did not file his motion to recuse in accordance with the rule; defendant failed to attach an affidavit from himself or his attorney to his motion, and his motion for recusal was not timely. Torrey v. State, 229 So. 3d 156 (Miss. Ct. App. 2017).

Defendant's claim of ineffective assistance of counsel was dismissed because the record did not affirmatively indicate that defendant received ineffective assistance of constitutional dimensions, and the parties did not stipulate that the record was adequate to allow the court of appeals to make findings without considering a trial judge's findings of fact. Sanders v. State, 228 So. 3d 888 (Miss. Ct. App. 2017), writ of certiorari denied by 223 So. 3d 787, 2017 Miss. LEXIS 323 (Miss. Aug. 10, 2017).

Defendant's claim that he received ineffective assistance from his trial counsel was dismissed because the record did not affirmatively indicate that defendant received ineffective assistance of constitutional dimensions, and the parties did not stipulate that the record was adequate to allow the court of appeals to make findings without considering a trial judge's findings of fact. Torrey v. State, 229 So. 3d 156 (Miss. Ct. App. 2017).

Petitioner was denied leave to proceed in the trial court with a motion for post-conviction relief because he failed to show that counsel's actions were deficient and that the deficiency prejudiced the defense of the case for any of his ineffective-assistance-of-counsel claims. Corrothers v. State, 255 So. 3d 99 (Miss. 2017).

Because petitioner failed to show a different outcome would have been reached had a witness testified according to her affidavit, his request for leave to proceed with in the trial court with a motion for post-conviction relief on his recanted-testimony claim was denied; the witness was not the only one who identified petitioner. Corrothers v. State, 255 So. 3d 99 (Miss. 2017).

Court of appeals declined to address defendant's ineffective assistance of counsel claims because the record did not affirmatively indicate he received ineffective assistance of constitutional dimensions; the parties did not stipulate that the record was adequate to allow the court of appeals to make findings without considering a trial judge's findings of fact. Dowden v. State, 203 So. 3d 743 (Miss. Ct. App. 2016).

In a murder case, a claim that counsel was ineffective based on a request for a plea to the offense of manslaughter while the jury was present was dismissed without prejudice so it could be raised in a post-conviction proceeding. Sufficient evidence did not exist within the record to address the claim adequately. Hall v. State, — So. 3d —, 2016 Miss. LEXIS 125 (Miss. Mar. 17, 2016), opinion withdrawn by 2016 Miss. LEXIS 427 (Miss. Oct. 13, 2016), opinion withdrawn by, substituted opinion at 201 So. 3d 424, 2016 Miss. LEXIS 540 (Miss. Oct. 13, 2016).

In a statutory rape case, ineffective assistance claims based on failure to investigate, failure to reciprocate discovery, and failure to identify and call additional alibi witnesses, and the question of whether defendant was prejudiced by the totality of counsel's performance were not based on facts fully apparent from the record. The arguments could have been made in a petition for postconviction relief. Giles v. State, 187 So. 3d 116 (Miss. 2016).

Defendant's ineffective assistance of counsel claims were not appropriate for review on direct appeal because the record was insufficient for an appellate court to review the claims. Thus, dismissal of the claims without prejudice to defendant's ability to raise the claims in a properly filed petition for post-conviction relief was appropriate. Hale v. State, 191 So. 3d 719 (Miss. 2016), modified and rehearing denied by 2016 Miss. LEXIS 205 (Miss. May 19, 2016).

Trial record, standing alone, did not validate defendant's claims of ineffective assistance of counsel, and so the Supreme Court declined to address them on direct appeal. Shinn v. State, 179 So. 3d 1006 (Miss. 2015).

Defendant's claim of ineffective assistance of counsel was dismissed without prejudice to his ability to raise it in postconviction proceedings, as the record did not affirmatively indicated he suffered denial of effective assistance of counsel of constitutional dimensions nor did the parties stipulate that the record was adequate to allow the appellate court to make a finding without considering the findings of fact by the trial judge. Grady v. State, 190 So. 3d 870 (Miss. Ct. App. 2015), writ of certiorari denied by 202 So. 3d 206, 2016 Miss. LEXIS 193 (Miss. May 12, 2016).

Defendant was not entitled to relief on a claim of ineffective assistance of counsel because the parties did not stipulate that the record was sufficient to review the issue of ineffective assistance of counsel on direct appeal. Wallace v. State, 166 So. 3d 520 (Miss. Ct. App. 2014), writ of certiorari dismissed by 2015 Miss. LEXIS 341 (Miss. June 25, 2015).

Defendant's arguments that his counsel's failure to object constituted ineffective assistance of counsel were rejected on appeal because any issue not clearly apparent from the record—including failure to object to the State's peremptory challenges to venire members and to trial evidence—was best addressed in a post-conviction-relief petition pursuant to this rule. Keller v. State, 138 So. 3d 817 (Miss. 2014), writ of certiorari denied by 135 S. Ct. 1397, 191 L. Ed. 2d 371, 2015 U.S. LEXIS 1353, 83 U.S.L.W. 3677 (U.S. Feb. 23, 2015).

Defendant's ineffective-assistance-of-counsel arguments were improper for direct appeal because the record lacked any evidence one way or the other regarding whether counsel's choices of not making an opening statement, not proposing any jury instructions, and not calling a witness at trial might have been permissible trial strategy. Thomas v. State, 134 So. 3d 357 (Miss. Ct. App. 2013).

Because the reviewing court lacked the benefit of any evidence defendant would have presented in support of his insanity defense, which was relevant to the prejudice prong of the Strickland test, defendant's ineffective-assistance-of-counsel claim was better left for post-conviction proceedings. Pauley v. State, 113 So. 3d 557 (Miss. 2013).

Alleged deficiencies of counsel were not based on facts fully apparent from the record, and were more appropriate for post-conviction review. Keithley v. State, 111 So. 3d 1202 (Miss. 2013).

Appellate court declined to consider appellant's ineffective assistance of counsel claim regarding his trial attorney's failure to secure an expert witness for appellant's trial on a charge of depraved heart murder in connection with the death of a one-year-old child who had been in appellant's care because the record was simply not developed enough to determine whether appellant would have been able to produce expert testimony rebutting the State experts' conclusion that the child died of Shaken Baby Syndrome; appellant's right to fully develop his ineffectiveness issues through a motion for post-conviction relief was preserved. Brandon v. State, 109 So. 3d 128 (Miss. Ct. App. 2013).

In appellant's trial on a charge of depraved heart murder of a one-year-old child who had been in appellant's care, appellant's trial counsel was not deficient for stipulating to a State's witness's qualifications as an expert in forensic pathology because the witness had been consistently found qualified to render expert opinions in the field of forensic pathology in criminal cases and both of the child's treating physicians testified the child's injuries were caused by being violently shaken and not by a short fall from a bed, as claimed by appellant; even if trial counsel had succeeded in disqualifying or otherwise discrediting the pathologist, it was reasonably probable the outcome would not have been different. Brandon v. State, 109 So. 3d 128 (Miss. Ct. App. 2013).

On appeal from his conviction for sexual battery of a child by a person in a position of trust or authority over the child, the appellate court determined that his claim regarding the ineffective assistance of counsel could be more adequately addressed during post-conviction proceedings, where additional evidence might be available in support of the claim, Miss. R. App. P. 22(b). Thus, defendant's right to raise the issue of the effectiveness of his counsel during post-conviction proceedings was affirmed without prejudice. Roberson v. State, 61 So. 3d 204 (Miss. Ct. App. 2010), writ of certiorari denied by 62 So. 3d 974, 2011 Miss. LEXIS 263 (Miss. 2011), writ of certiorari denied by 132 S. Ct. 507, 181 L. Ed. 2d 358, 2011 U.S. LEXIS 7779, 80 U.S.L.W. 3260 (U.S. 2011).

While the record on appeal was insufficient to review defendant's claim of ineffective assistance of trial counsel, under Miss. R. App. P. 22(b), defendant could raise the issue in a motion for postconviction relief, if defendant chose to do so. McCullough v. State, 47 So. 3d 1206 (Miss. Ct. App. 2010).

Defendant's claim of ineffective assistance of counsel was not appropriate for consideration on direct appeal because deciding the issue on the record before the appellate court would require speculation as to counsel's motives in examining a witness. Henry v. State, 124 So. 3d 87 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 559 (Miss. Oct. 24, 2013).

Miss. R. App. P. 22(b) provided the court the authority to address an ineffective assistance of counsel claim on direct appeal where the facts were apparent in the trial record; however, there were times in which there was not enough evidence in the trial record for the court to adequately address the issue, and under that circumstance, the appropriate procedure was to deny relief, preserving the defendant's right to argue the issue through a petition for post-conviction relief. In defendant's case there was not enough evidence in the trial record for the court to address defendant's claim of ineffective assistance of counsel, and therefore, the appellate court denied relief without prejudice to defendant's right to raise that argument in a timely filed motion for post-conviction relief, if he so chose. Miller v. State, 18 So. 3d 898 (Miss. Ct. App. 2009).

Because it was not clear what subsequent developments, if any, defendant's counsel might have relied upon in a motion for new trial, the facts relating to the issue were not fully apparent from the record; the appellate court therefore declined to address the issue of ineffective counsel on direct appeal. Pittman v. State, 42 So. 3d 556 (Miss. Ct. App. 2009), writ of certiorari denied by 42 So. 3d 24, 2010 Miss. LEXIS 453 (Miss. 2010).

Appellate court noted that there could be several reasonable explanations for why defense counsel never revisited the intruder theory, including the fact that defendant did not take the stand; because this issue involved questions of inaction by trial counsel and would require information outside the record, it could not properly be addressed and appropriately would be raised in post-conviction-relief proceedings. Neal v. State, 15 So. 3d 388 (Miss. 2009).

Self-ineffectiveness claim is absolutely inappropriate and must not be permitted under Miss. R. App. P. 22(b); in the event a reviewing court finds itself presented with a claim of ineffective assistance of counsel asserted by the very counsel claimed to have been ineffective, it should not address and rule upon the matter during a direct appeal, no matter how clearly the record indicates baselessness. The only means by which a reviewing court adequately can ensure that a criminal defendant represented on appeal by his or her trial counsel has the opportunity at least to fully raise an ineffectiveness claim is via a post-conviction proceeding. Archer v. State, 986 So. 2d 951 (Miss. 2008).

Where defendant's appellate counsel assisted defendant's lead counsel at trial, appellate counsel's participation in the defense at trial, regardlessof his role, by imputation ascribed any potential claim of deficient and prejudicial trial performance unto himself as well and consequently constituted an impermissible self-ineffectiveness claim. Archer v. State, 986 So. 2d 951 (Miss. 2008).

Motion denied.

In his post-conviction relief petition, petitioner failed to identify an alternative method of execution that was feasible, readily implemented, and significantly reduced a substantial risk of severe pain; thus, from the face of the petition, he had no Eighth Amendment method-of-execution claim, and his request for leave to proceed in the trial court with a motion for post-conviction relief was denied. Corrothers v. State, 255 So. 3d 99 (Miss. 2017).

Because the supreme court had already considered the merits of petitioner's claim that his death sentence violated the Eight Amendment petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99 (Miss. 2017).

Motion granted.

Petitioner was granted leave to proceed in the trial court with his post-conviction relief petition on his claim that his Sixth Amendment right to trial by an impartial jury was violated since one of the jurors was biased; since petitioner's claim was at least "procedurally alive," his allegation of improper juror contact warranted an evidentiary hearing Corrothers v. State, 255 So. 3d 99 (Miss. 2017).

Procedural bar.

Because the supreme court had already considered the merits of petitioner's claim that his death sentence violated the Eight Amendment petitioner was procedurally barred from raising it again in a motion for post-conviction relief. Corrothers v. State, 255 So. 3d 99 (Miss. 2017).

Right to counsel.

Where petitioner state death row inmate argued his due process rights were violated in that counsel was appointed to represent him at the state post-conviction collateral relief stage under Miss. Code Ann. §§ 99-39-103, 99-39-107, but the representation, owing to systemic and other flaws, was completely deficient under Miss. App. R. 22, that argument was rejected for purposes of habeas relief because even with 28 U.S.C.S. § 2261, there was no constitutional right to counsel beyond the direct appeal and ineffectiveness of post-conviction counsel could not be the grounds for habeas relief. Stevens v. Epps, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 69564 (S.D. Miss. Sept. 15, 2008), affirmed by 618 F.3d 489, 2010 U.S. App. LEXIS 18696 (5th Cir. Miss. Sept. 7, 2010).

GENERAL PROVISIONS

Rule 23. Call and order of docket.

(a) *Civil cases.* Except as may be provided by special order, all civil cases will be submitted in the order in which they stand on the docket.

(b) *Criminal cases.* Criminal cases may be set for call on any day when the Supreme Court or the Court of Appeals is sitting, and in such numbers as it may designate.

(c) *Oral argument.* All cases, civil and criminal, where oral argument is not granted, will be submitted when they are reached on the docket, without the necessity of the cases being called and without notice to the lawyers or litigants.

(d) *Decisions.* The minutes of the Supreme Court shall be signed and announcement of decisions shall be made on each Thursday when the Court is sitting. The minutes of the Court of Appeals shall be signed and announcement of decisions shall be made monthly or more often as the Court of Appeals deems necessary.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 23 replaced Miss.Sup.Ct.R. 23, embracing proceedings in the Court of Appeals. 644-647 So.2d LVII-LVIII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 23 follows the longstanding practices of the Supreme Court as to the order and call of the docket. A civil case may be expedited only by special order, while expedition in hearing a criminal case requires no such order. Normally, upon motion, the Supreme Court will enter an order expediting a case where preference is granted by statute. The statutes grant preference in certain civil cases, including *quo warranto* actions, actions of mandamus where the public interest is concerned, and cases involving taxes claimed by the state, county or municipality, Miss. Code Ann. § 11-3-3 (1972); in challenges to removal elections, Miss. Code Ann. § 25-5-35 (1991); and in appeals from Youth Court, Miss. Code Ann. § 43-21-651 (1972). Also by statute, cases in which the defendant has received a death sentence are preference cases. Miss. Code Ann. § 9-3-21 (1991). Rule 5(d) authorizes the Supreme Court to grant a preference in hearing interlocutory appeals and Rule 21 grants a preference in handling petitions for extraordinary writs. Rule 34 governs practice in granting and holding oral argument.

Rule 24. [Omitted].

Editor's Note — Former Rule 24 and its Advisory Committee Historical Note and Comment were struck from the Mississippi Rules of Appellate Procedure effective October 5, 2017. The rule related to the Court sitting in panels.

Rule 25. Filing and service.

(a) *Filing.* Papers required or permitted to be filed shall be filed with the clerk of the Supreme Court and no motion, brief, motion for rehearing or other document, or any copy shall be sent by an attorney directly to any individual justice except as provided in Rule 8(c).

(1) *Electronic Filing.* Electronic filing is governed by the Appellate E-Filing Administrative Procedures.

(2) *Conventional Filing.* Conventional filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs and record excerpts shall be deemed filed on the day of mailing by first class mail with postage prepaid, or any more expeditious form of delivery. For briefs and record excerpts to be deemed filed on the day of mailing, they must be accompanied by a certificate signed by the person who will actually mail the brief or record excerpt. The certificate shall specify the document filed, the number of copies filed, and the date the paper will be deposited in the United States mail addressed to the clerk. Papers received by the clerk of the Supreme Court without a certificate of filing shall be deemed filed when received by that clerk.

(3) *Conventional Filing by Facsimile Transmission of Unopposed Procedural and Emergency Motions.* Conventional Filing of unopposed procedural and emergency relief motions may be accomplished by facsimile (fax) transmission. A document longer than five pages shall not be filed without prior leave of the clerk.

Each facsimile transmission shall be accompanied by a facsimile cover page which states the date of the transmission, the name and telephone number of the person transmitting the document, the name and facsimile telephone number of the person to whom the document is being transmitted, the docket number and style of the case in which the document is to be filed, the style of the document being filed, and the number of pages being transmitted, excluding the cover page.

A facsimile fee shall be required for filing a document by facsimile transmission.

Only one copy of the document shall be transmitted; the clerk will provide any additional copies required by these rules or an order of the appropriate appellate court, and the cost of copying shall be assessed against the filing party. Papers filed by facsimile transmission shall be deemed filed when the official date and time stamp of the clerk is affixed to the transmission. The facsimile signature shall be deemed an original signature. The filing party shall retain possession of the original executed document for submission to the Court if there is a dispute over authenticity.

A paper may be filed by facsimile transmission only if it can be served on opposing counsel by facsimile transmission. Service of a paper by facsimile transmission is complete when the person transmitting the paper receives confirmation of receipt of the transmission by the facsimile machine of the person served.

The proof of service for a paper served by facsimile transmission shall state the facsimile telephone number of the person to whom the paper was transmitted. A copy of the transmission report to opposing counsel shall be attached to the transmitted document. The person transmitting the document shall further certify that the facsimile fee and any required filing fee have been mailed to the clerk contemporaneously with the facsimile transmission.

Failure to comply with the facsimile requirements of this rule may result in the imposition of sanctions; the document transmitted may be stricken or deemed not filed, or other appropriate action may be taken.

Completion of Filing. Except as provided above, when these rules or an order of an appellate court requires multiple copies of a document to be filed, filing shall not be deemed complete until all required copies are filed. If a motion is filed with a single justice as permitted by Rule 8, the justice may permit the motion to be filed with that justice, in which event the justice shall note on the motion the date of filing and shall forward the motion to the clerk of the Supreme Court.

(b) *Service of all papers required.* Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. In all cases a copy of any brief on the merits shall be served on the judge who presided at the trial and, in criminal cases, with the office of the District Attorney.

(c) *Manner of service.* Service may be personal or by mail or, in limited instances, by facsimile transmission. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. A paper may be served by facsimile transmission only if it can be filed by facsimile transmission and only if the person to be served is an attorney who has consented to receive facsimile transmissions. An attorney may consent by including the attorney's facsimile telephone number in the letterhead or signature/address block of a paper the attorney files in the case. Consent may be rescinded by serving and filing notice to the other parties to the appeal or review and to the clerk of the Supreme Court. Service of a paper by facsimile transmission is complete when the person transmitting the paper receives confirmation of receipt of the transmission by the facsimile machine of the person served.

(d) *Proof of service.* Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly. The proof of service for a paper served by facsimile transmission shall state the facsimile telephone number of the person to whom the paper was transmitted. (Amended June 21, 1996; amended effective June 27, 2002; amended effective October 25, 2018.)

COMMENT

Electronic filing in most appellate matters became mandatory on January 1, 2014. Under Section 1.D. of the Appellate E-Filing Administrative Procedures, "all briefs. motions, responses, and compliance documents ... must be filed electronically." Section 4 exempts sealed and confidential cases, pro se litigants, and documents other than briefs. motions, responses and compliance documents, all of which must be filed conventionally.

Rule 25 is substantially patterned after Fed. R. App. P. 25. It enlarges upon former practice to provide that for conventional filing service by mail is complete on mailing. Filing of briefs and record excerpts is deemed to take place on the day of mailing if they are sent by first class mail with postage prepaid or any more expeditious form of delivery. Other papers are deemed filed when filed with the clerk.

Unlike the federal rule, this rule does not permit papers to be filed with a single justice as a matter of course. It restricts such filings to requests for emergency stay relief under Rule 8(c).

Rule 25 is substantially patterned after Fed.R.App.P. 25. It enlarges upon former practice to provide that service by mail is complete on mailing. Filing of briefs and record excerpts is deemed to take place on the day of mailing if they are sent by first class mail with postage prepaid or any more expeditious form of delivery. Other papers are deemed filed when filed with the clerk.

Unlike the federal rule, this rule does not permit papers to be filed with a single justice as a matter of course. It restricts such filings to requests for emergency stay relief under Rule 8(c).

JUDICIAL DECISIONS

Notice of appeal.

Jurisdiction was appropriate in an action involving contempt and the modification of child support because the mother's notice of appeal was not filed on the date of mailing but upon the date it was actually received by the clerk of the trial court at which time the clerk had already received and stamped her motion for reconsideration. Howard v. Howard, 913 So. 2d 1030 (Miss. Ct. App. 2005), remanded by 968 So. 2d 961, 2007 Miss. App. LEXIS 760 (Miss. Ct. App. 2007).

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 21, 1996, Rule 25(a) was amended to redesignate rehearing "petitions" as "motions." 673-678 So.2d XL (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 25 replaced Miss.Sup.Ct.R. 25, embracing proceedings in the Court of Appeals. Rule 25 was further amended to provide for filing by facsimile transmission. 644-647 So.2d LIX-LXI (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1998.]

Rule 26. Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, by order of the Supreme Court or the Court of Appeals, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as defined by statute, or any other day when the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the clerk's office is closed. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. In the event any legal holiday falls on a Sunday, the next following day shall be a legal holiday.

(b) *Enlargement.* The Supreme Court or the Court of Appeals for good cause shown may, upon motion, enlarge the time prescribed by the rules or by its order for doing any act, or may permit an act to be done after the expiration of such time, but the Supreme Court will not enlarge the time for filing notice of appeal or a petition for permission to appeal.

(c) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon that party and the paper is served by mail, three (3) days shall be added to that prescribed period.

(d) *Unaffected by expiration of term.* The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The existence or expiration of a term of court in no way affects the power of either the Supreme Court or the Court of Appeals to do any act consistent with these rules.

Cross References — Computation and enlargement of time in civil proceedings, see M.R.C.P. 6.

Computation and enlargement of time in criminal proceedings, see MRCrP 1.3.

Filing documents electronically does not alter any filing deadlines or any time computation pursuant to this Rule, see Appellate E-Filing Administrative Procedures § 3.D.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 26 replaced Miss.Sup.Ct.R. 26, embracing proceedings in the Court of Appeals. 644-647 So.2d LXI-LXII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 26 is patterned after Fed.R.App.P. 26 and M.R.C.P. 6. The purpose of this rule is to provide reasonably flexible, general guidelines for the measurement of time periods under these rules. Under Rule 26(b), the court is given wide discretion to enlarge the various time periods both before and after the actual termination of the allotted time, with the exception of enlarging the time for filing a notice of appeal under Rule 4, or a petition for permission to appeal under Rule 5.

Rule 26(a) incorporates legal holidays as defined by statute. *See* Miss. Code Ann. § 3-3-7 (1991).

JUDICIAL DECISIONS

Holidays.
Late appeal.
Weekends.

Holidays.

Wife's appeal of a divorce decree was timely as the deadline for the appeal was extended since the last day of the appeal period ran on Confederate Memorial Day, which was a legal holiday. Wilson v. Wilson, 115 So. 3d 144 (Miss. Ct. App. 2013).

Appellant's notice of appeal was dismissed as untimely; legal holiday corresponding to Washington's birthday was governed by statute, and when properly computed, time for perfecting appeal had passed. Moore v. Wax, 554 So. 2d 312 (Miss. 1989).

Late appeal.

Appellate court lacked jurisdiction to hear an appeal from an order denying a motion to reconsider summary judgment because the order was not appealed within 30 days of its entry, notwithstanding that a circuit court clerk had failed to notify the parties of the order as required by Miss. R. Civ. P. 77(d). Payne v. Magnolia Healthcare, Inc., 984 So. 2d 290 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2008 Miss. LEXIS 291 (Miss. June 12, 2008).

Pursuant to the time periods for filing an appeal under Miss. R. App.P. 4(a) and 26(a), a terminated department of corrections employee's appeal of the circuit court's upholding of his termination was filed late and, because the circuit court had not granted his motion for a late appeal, the Supreme court of Mississippi was without jurisdiction over the instant appeal, and the supreme court could not extend the time for filing. Redmond v. Miss. Dep't of Corr., 910 So. 2d 1211 (Miss. Ct. App. 2005).

Weekends.

Court did not err when it did not strike a brief as being untimely filed because: (1) the brief was filed on October 17, 2006, and the party's motion for extension of time was filed on November 16, 2006; (2) on February 14, 2007, the court granted twenty more days to file the brief, and the party filed its brief on March 6, 2007; (3) the party filed its motion for an extension of time within the prescribed 30-day time limit; and (4) the court granted an extension through March 6, 2007, because March 5, 2007, was a Sunday. Franklin v. BSL, Inc., 987 So. 2d 1050 (Miss. Ct. App. 2008).

Where the trial court entered a final judgment in a child custody case on September 8, 2006, appellant had thirty days to file her notice of appeal; since the thirtieth day was a Sunday, appellant had until Monday, October 9, to file her notice of appeal under Miss. R. App. P. 26. The notice of appeal filed on Tuesday, October 10, 2006 was untimely. Dudley v. Harris, 979 So. 2d 692 (Miss. Ct. App. 2008).

Rule 27. Motions.

(a) *Content of motions; response.* Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven (7) days after service of the motion, but motions authorized by Rules 8, 9, and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) *Determination of motions for procedural relief.* Notwithstanding the provisions of Rule 27(a) as to motions generally, motions for procedural relief may be acted upon at any time without awaiting a response. When unopposed, motions for specified types of procedural orders may be disposed of by the clerk of the Supreme Court. The clerk may rule on motions:

(1) for enlargement of time permitted by these rules for periods not to exceed a total of 60 days,

(2) to make corrections in briefs or pleadings filed at the request of counsel filing the brief or pleading,

(3) to withdraw as counsel and/or substitute appearance of counsel, except in appeals from the imposition of a sentence of death,

(4) to voluntarily dismiss appeals where sought by the appellant or the cross-appellant, unless the case has been submitted to the Court for decision,

(5) to increase the page limit for briefs up to 75 pages, or up to 125 pages in appeals from the imposition of a sentence of death,

(6) to supplement the record where documents which were included in the designation of, yet omitted from, the record are certified according to Rule 11 and attached to the motion,

(7) to appear pro hac vice,

(8) to suspend record preparation or briefing, and

(9) such other motions as the Court may from time to time direct.

Any party adversely affected by such action may by motion to the appropriate appellate court request reconsideration, vacation or modification of such action by the clerk.

(c) *Power of a single justice to entertain motions.* In addition to the authority expressly conferred by these rules or by law, a single justice of the Supreme Court or a single judge of the Court of Appeals may entertain and may grant or deny any request for relief which, under these rules, may properly be sought by motion, except that when a motion is contested a single justice or judge may not dismiss or otherwise determine an appeal or other proceedings. A single justice or judge may rule on opposed motions otherwise subject to action by the clerk under Rule 27(b).

(d) *Form and Number of Conventionally Filed Papers.* When filed conventionally, all papers relating to motions shall be typewritten or printed and all exhibits and other attachments shall be securely bound. An original and four (4) copies shall be filed with the clerk of the Supreme Court. The Supreme Court or the Court of Appeals may require that additional copies be furnished.

(e) *Oral argument not permitted.* Unless otherwise ordered by the court to which the cases is assigned, no motion shall be orally argued. If the appropriate court requests oral argument, the matter will be heard at such time as the court may designate with reasonable notice to the parties.

(f) *Motions proposing adoption, repeal, or amendment of rules of court and rules governing the practice of law.* All applications concerning the adoption, repeal, or amendment of the Mississippi Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Criminal Procedure, Uniform Civil Circuit and County Court Rules, Uniform Chancery Court Rules, Uniform Rules of Procedure for Justice Court, Code of Judicial Conduct, Rules of the Commission on Judicial Performance, Rules and Regulations for Mandatory Continuing Judicial Education, Rules of Professional Conduct, Rules of Discipline for the Mississippi Bar, Rules and Regulations for Mandatory Continuing Legal Education, Rules Governing Admission to the Mississippi

Bar, and all other rules affecting the practice of law and the administration of the courts in Mississippi shall be filed in the Supreme Court. Such motions shall comply with all other requirements of the Mississippi Rules of Appellate Procedure; specifically, four (4) copies shall be filed with the original, but the Supreme Court may require that additional copies be furnished. Such motions should include the text of the proposed new rule or of the rule to be amended with deletions indicated by strikeouts and additions shown underlined. The motions shall also be accompanied by a copy of the motion and of the proposed rule or rule amendment in an electronically formatted medium (such as USB Flash Drive or CD-ROM). No notice or response to such motion shall be required, except as may be required by the Court, but the Court may in its discretion submit any rules motion to the Supreme Court Rules Advisory Committee, or any other source, for review and comment. Upon receipt of requests or petitions for adoption or amendment of rules the Court may publish the proposal or request on the Supreme Court's Internet site, and invite comment thereon. No action shall be taken by the Supreme Court on such proposal or request for a period of thirty (30) days following the commencement of such publication, and all comments received shall be considered; however, the Court may dispense with such publication and comment in the event that the Court deems the urgency of the proposal or request prohibitive to the delay needed for publication and comment.

(g) *Motions Regarding the Setting of Term and Assigning of Causes in the Trial Courts.* Orders entered and other actions in the chancery and circuit courts setting terms of court and assigning causes and dockets under Miss. Code Ann. § 9-5-3 and § 9-7-3 are subject to review by the Supreme Court on petition of any judge of the district wherein such orders have been entered or such action has been taken. The setting of terms and assigning of causes and dockets in the chancery and circuit courts shall be done fairly considering the relative work loads of the judges and the right of litigants within the district to fair and reasonable access to all of the judicial officers as well as reasonable accommodation of the requests and needs of all judges within the district. Further, the assignment of cases and dockets shall be done through a systematic plan recognizing the criteria set out herein.

(h) *Reconsideration on motions.* Motions for reconsideration, vacation or modification of rulings of the Supreme Court and the Court of Appeals on motions are generally not allowed. However motions for reconsideration of rulings on motions and petitions may be filed within 14 days after a decision is handed down on the motion to be reconsidered as to:

(1) non-voluntary dismissal of pending appeals under rule 2(a);

(2) procedural dispositions by the Clerk of the Court under Rule 27(b);

(3) petitions for interlocutory appeal under Rule 5;

(4) motions for stay and supersedeas under Rule 8;

(5) petitions for writ of mandamus, prohibition or extraordinary writs under Rule 21;

(6) motions to amend, correct or clarify orders, opinions, and mandates;

(7) motions for recusal of justices or judges or review of ruling of trial judges on recusal under M.R.A.P. 48B or 48C; and

(8) in extraordinary cases, by suspension of the rules for good cause shown under Rule 2(c). (Adopted to govern matters filed on or after January 1, 1995; amended October 15, 1998, effective from and after January 1, 1999; amended July 1, 1999; amended effective August 26, 1999; amended effective November 2, 2000; amended effective May 29, 2003 to provide for reconsideration of certain specific types of motions and petitions, if filed within 14 days following the ruling for which reconsideration is sought; amended effective September 30, 2004 to recognize that the Court may from time to time allow the clerk to rule on specified motions; amended March 27, 2008, to expand the provision under which the Court may post proposals for public comment; amended effective July 1, 2010; amended effective July 1, 2017; amended effective October 25, 2018.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 27, 2002, Rule 27(b) was amended to delete motions 'to stay issuance of mandate pursuant to Rule 41' from the list of motions on which the clerk may rule. 819-821 So.2d XX (West Miss.Cases 2002).

Effective November 2, 2000, a new Rule 27(g) was adopted. 770-772 So.2d XVII (West Miss.Cases 2000).

Effective August 26, 1999, Rule 27(f) and the Comment were amended to provide for publication of proposals on the Supreme Court's Internet site and an attendant comment period. 736-737 So.2d XXI (West Miss.Cases 1999).

Effective June 24, 1999, Rules 27(b) and (g) were amended to effect editorial changes. 735 So.2d XIX (West Miss.Cases 1999).

Effective January 1, 1999, Rule 27(b) was amended to provide that the clerk may rule on motions to withdraw as counsel in non-capital cases, to voluntarily dismiss appeals, to obtain additional pages, to supplement the record, to appear pro hac vice, and to suspend the briefing schedule. 717-722 So.2d XXVII (West Miss.Cases 1998).

Effective January 1, 1999, Rule 27(g) was adopted and corresponding changes were made to Rule 27(c) and the Comment. 717-722 So.2d XXVII (West Miss.Cases 1998).

Effective June 21, 1996, following the redesignation of rehearing "petitions" as "motions," the Comment to Rule 27 was amended to provide that motions for rehearing cannot be considered by a single justice. 673-678 So.2d XLI (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 27 replaced Miss.Sup.Ct.R. 27, embracing proceedings in the Court of Appeals. Rule 27 was further amended by adding subsection (f) concerning motions pertaining to Rules of Court. 644-647 So.2d LXII-LXIV (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1998.]

COMMENT

Rule 27 is based on Fed.R.App.P. 27 as modified by 5th Cir.R. 27.

Many motions seek relief of a sort which is ordinarily unopposed, or which is granted as of course. The provision of subdivision (a), which permits any party to file a response in opposition to a motion within seven days after its service, assumes that the motion is one of substance which ought not be acted upon without affording affected parties an opportunity to reply. A motion to dismiss or otherwise determine an appeal is clearly such a motion. Motions authorized by Rules 8, 9, and 41 are likewise motions of substance, but, in the nature of the relief sought, to afford an adversary an automatic delay of at least seven days is undesirable; thus, such motions may be acted upon after notice which is reasonable under the circumstances.

The term “motions for procedural orders” is used in subdivision (b) to describe motions which do not substantially affect the rights of the parties or the ultimate disposition of the appeal (other than motions for voluntary dismissal). To prevent delay in the disposition of such motions, subdivision (b) provides that they may be acted upon immediately without awaiting a response. The rule also gives the clerk authority to dispose of certain procedural motions. An enlargement of time for filing a notice of appeal is not permitted by these rules and may not be granted by the clerk.

Subdivision (c) empowers a single justice to act upon virtually all requests for intermediate relief which may be made during the course of an appeal or other proceeding. By its terms, the justice may entertain and act upon any motion, other than a contested motion to dismiss or a contested motion that will otherwise determine an appeal or other proceeding.

Examples of the power conferred on a single justice by Rule 27(c) are: to determine any matter which, if unopposed, may be decided by the clerk under subdivision (b); to grant enlargements of time for any period beyond the 60 days granted by the clerk, except that the time period for filing a notice of appeal may not be extended, see Rules 2(c), 26(b); to permit an appeal in *forma pauperis* and to appoint counsel under Rule 6; to consider release in criminal cases under Rule 9; to expedite or to consolidate appeals under Rule 23; to permit the filing of further reply or supplemental briefs under Rule 28(d) or briefs of extraordinary length under Rule 28(h); to grant leave to file an amicus brief under Rule 29; to postpone oral argument under Rule 34(a) or grant additional time for oral argument under Rule 34(b); or to substitute parties under Rule 43.

Under Rule 27(c), a single justice may not act upon requests for permission to appeal under Rule 5, or for mandamus or other extraordinary writs under Rule 21, other than for stays or injunctions pending appeal, authority to grant which is “expressly conferred by these rules” on a single justice under certain circumstances under Rule 8.

Subdivision (f) sets out procedures to be followed in the adoption and amendment of rules governing practice and procedures in the courts and those specific to the practice of law. The provision of the subdivision providing for publication on the Internet and comment supercedes Misc. Order 2056 which formerly required Bar related petitions to be published in the *Mississippi Lawyer* with a ninety day comment period. Order 2056 was vacated by the order adoption of this provision for subdivision (f).

Rule 27(h) motions for reconsideration of the court’s ruling on motions or petitions are to be distinguished from Rule 40 motions for rehearing on opinions. Motions for clarification and correction of opinions and mandates which address issues other than specific errors of law or fact which would be determinative of the decision announced in the opinion should also be filed in accordance with the procedures set out in Rule 27, not those of Rule 40.

Rule 27(h) motions for reconsideration of the court’s rulings on motions are governed by and subject to the procedures set out in Rule 27. Generally, motions are decided by orders of the appellate courts.

Motions for rehearing are filed under Rule 40 and are appropriate only where an opinion has issued which the movant believes to contain specific errors of law or fact.

Reconsideration of the court’s ruling on a motion or petition is allowed only as to motions and petitions specified in Rule 27(h).

Rehearing on or reconsideration of decisions on motions or petitions is allowed only as to procedural motions granted or denied in the first instance by the clerk of the Supreme Court, or, in extraordinary circumstances, where the court suspends the rules under the provisions of Rule 2(c) or determines to reconsider or rehear on the court’s own motion.

A brief may be filed in support of a motion and such a brief should be filed unless the motion seeks a routine procedural order. The rule does not, however, require the filing of a brief with every motion.

Rule 27(h) motions for reconsideration of the court's ruling on motions or petitions shall, whenever possible, state with particularity specific reasons, in the opinion of the movant, the court's action should be reconsidered. The motion for reconsideration is not intended to afford an opportunity for a mere repetition of the argument already considered by the court, but may contain such argument in support of the motion as movant desires to present. See M.R.A.P. 40(a).

[Amended June 21, 1996; October 15, 1998; amended effective January 1, 1999; amended effective August 26, 1999; amended effective May 29, 2003; amended May 18, 2006; amended effective August 2, 2012.]

JUDICIAL DECISIONS

Application denied.
Attorneys' fees.
Fugitive dismissal rule.
Motion improperly dismissed.

Application denied.

After defendant's death penalty sentence was vacated and remanded for resentencing, a trial court properly determined that it did not have discretion to consider defendant's ex post facto claim because the execution of orders issued by the supreme court was a purely ministerial act, and lower courts had no authority to alter or amend them; instead, defendant's claim should have been raised in a response to a motion to the supreme court under Miss. R. App. P. 27(a), or in the alternative in a motion for reconsideration of a motion under Miss. R. App. P. 27(h) or in a motion for rehearing under Miss. R. App. P. 40. Foster v. State, 961 So. 2d 670 (Miss. 2007).

Inmate's applications for postconviction relief and for leave to file motion to vacate death sentence were denied as the inmate had already raised the argument of the "intervening decision" via the motion for rehearing and separate motion for appointment of counsel and for litigation expenses; the inmate was essentially seeking a rehearing of that motion under the guise of a postconviction claim by combining it with a "new" claim of ineffective assistance of counsel, which was prohibited by Miss. R. App. P. 27(h). Wiley v. State, 842 So. 2d 1280 (Miss. 2003).

Attorneys' fees.

Mother's request for appellate attorney's fees in a child support contempt proceeding could not be granted because the request had to be made by way of a motion complying with Miss. R. App. P. 27(a). Herrin v. Perkins, — So. 3d —, 2019 Miss. App. LEXIS 382 (Miss. Ct. App. Aug. 13, 2019).

Court of appeals denied a father's request for appellate attorney's fees without prejudice because the request was clearly set out in a separate section of his appellate brief with a citation to on-point authority. Brown v. Hewlett, — So. 3d —, 2019 Miss. App. LEXIS 94 (Miss. Ct. App. Mar. 12, 2019).

Because a mother did not file a motion that conformed with the rule, the court of appeals denied her request for appellate attorney's fees without prejudice so she could file her request in a motion that conformed with the rule. Wilkinson v. Wilkinson, — So. 3d —, 2019 Miss. App. LEXIS 77 (Miss. Ct. App. Feb. 26, 2019).

Because a wife failed to make a viable request for relief under the rule, the supreme court declined to consider her request for attorneys' fees; the wife did not file a motion requesting attorneys' fees on appeal, rather she buried a one sentence request in her brief, and such requests did not comport with the Mississippi Rules of Appellate Procedure. Latham v. Latham, 261 So. 3d 1110 (Miss. 2019).

While the supreme court has suggested that the better practice for a party seeking attorneys' fees on appeal is to file a motion pursuant to subsection (a), henceforth, such requests must comply with subsection (a). Latham v. Latham, 261 So. 3d 1110 (Miss. 2019).

Fugitive dismissal rule.

Upon reconsideration of the dismissal of a mother's challenge to a chancery court order awarding custody of her children to their father, the fugitive dismissal rule was properly applied because the mother fled the jurisdiction with her children and remained at large while her appeal was pending. D.C. v. D.C., 988 So. 2d 359 (Miss. 2008), writ of certiorari denied by 555 U.S. 1178, 129 S. Ct. 1320, 173 L. Ed. 2d 597, 2009 U.S. LEXIS 1554, 77 U.S.L.W. 3468 (2009), remanded by 13 So. 3d 269, 2009 Miss. LEXIS 270 (Miss. 2009).

Motion improperly dismissed.

Lessor's motion for reconsideration of dismissal of his appeal was improperly dismissed as untimely because there was authority for a circuit court's ruling that filing a motion for reconsideration using a county court caption rendered the motion not filed. Adams v. A & C Entm't, 6 So. 3d 1082 (Miss. 2009).

RESEARCH REFERENCES

Law Reviews — Recent Trends in Mississippi Judicial Rule Making: Court Power, Judicial Recusals, and Expert Testimony, 23 Miss. C. L. Rev. 1, Fall, 2003.

Rule 28. Briefs.

(a) *Brief of the appellant.* The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) Certificate of Interested Persons. This certificate shall list all persons, associations of persons, firms, partnerships, or corporations which have an interest in the outcome of the particular case.

If a large group of persons or firms can be specified by a generic description, individual listing is not necessary.

The certificate shall be in the following form: Number and Style of Case.

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

(Here list names of all such persons and identify their connection and interest.)

____

Attorney of record for

____

Governmental parties need not supply this certificate.

(2) *Tables.* There shall follow a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(3) *Statement of Issues.* A statement shall identify the issues presented for review. No separate assignment of errors shall be filed. Each issue presented for review shall be separately numbered in the statement. No issue not distinctly identified shall be argued by counsel, except upon request of the court, but the court may, at its option, notice a plain error not identified or distinctly specified.

(4) *Statement of Assignment.* Unless the case has already been assigned by the Court, the appellant must succinctly give the reasons, if any, that the Supreme Court either must or should retain the case for the reasons stated

under Rule 16(b) or (d). The statement should include citations to any cases sought to be overruled or perceived to be in conflict.

(5) *Statement of the Case.* This statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the court below. There shall follow the statement of facts relevant to the issues presented for review, with appropriate references to the record.

(6) *Summary of the Argument.* The summary, suitably paragraphed, should be a succinct, but accurate and clear, condensation of the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed two (2) and never five (5) pages.

(7) *Argument.* The argument shall contain the contentions of appellant with respect to the issues presented, and the reasons for those contentions, with citations to the authorities, statutes, and parts of the record relied on.

(8) *Conclusion.* There shall be a short conclusion stating the precise relief sought.

(b) *Pro Se Supplemental Brief in Criminal Appeal.* An appellant in a criminal appeal may file a pro se supplemental Brief of the Appellant. This pro se brief may address issues not raised by counsel, but such issues must be based on the record. This pro se brief shall conform to the requirements of Rule 28(a), (e), (f), (h) and (l).

(c) *Brief of the appellee.* The brief of the appellee shall conform to the requirements of Rule 28(a) except that a statement of issues, of assignment, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(d) *Reply brief.* The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the Court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the reply brief where they are cited.

(e) *References in briefs to parties.* Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as “appellant” and “appellee.” It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of the parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” or “plaintiff.”

(f) *References in briefs to the record and citations.* All briefs shall be keyed by reference to page numbers (1) to the record excerpts filed pursuant to Rule 30 of these Rules, and (2) to the record itself.

(1) The Supreme Court and the Court of Appeals shall assign paragraph numbers to the paragraphs in all published opinions. The paragraph numbers shall begin at the first paragraph of the text of the majority opinion and shall continue sequentially throughout the majority opinion and any concurring or dissenting opinions in the order that the opinions are arranged by the Court.

(2) All Mississippi cases shall be cited to either:

(i) the *Southern Reporter* and, in cases decided prior to 1967, the official Mississippi Reports (e.g., *Smith v. Jones,* 699 So. 2d 100 (Miss. 1997); *Thompson v. Clark,* 251 Miss. 555, 170 So. 2d 225 (1965)); or

(ii) for cases decided from and after July 1, 1997, the case numbers as assigned by the Clerk's Office (e.g., *Smith v. Jones,* 95-KA-01234-SCT (Miss. 1997)).

(3) Quotations from cases and authorities appearing in the text of the brief shall be cited in one of the following ways:

(i) preceded or followed by a reference to the book and page in the *Southern Reporter* and/or the Mississippi Reports where the quotation appears (e.g., *Smith v. Jones,* 699 So. 2d 100, 102 (Miss. 1997)); or

(ii) in cases decided from and after July 1, 1997, preceded or followed by a reference to the case number assigned by the Clerk's Office and paragraph number where the quotation appears (e.g., *Smith v. Jones,* 95-KA-01234-SCT (¶1) (Miss. 1997)); or

(iii) in cases decided from and after July 1, 1997, preceded or followed by a reference to the book and paragraph number in the Southern Reporter where the quotation appears (e.g., *Smith v. Jones,* 699 So.2d 100 (¶1) (Miss. 1997)); or

(iv) in cases decided prior to July 1, 1997, preceded or followed by a reference to the case number assigned by the Clerk's Office and paragraph number where the quotation appears when the case is added to the Court's Internet web site in the new format, i.e., with paragraph numbers (e.g., *Smith v. Jones,* 93-CA-05678-SCT (¶1) (Miss. 1995)); or

(v) preceded or followed by a parallel citation using both the book citation and the case number citation.

(g) *Reproduction of statutes, rules, regulations, etc.* If determination of the issues presented requires the study of statutes, rules, or regulations, etc., they shall be reproduced in the brief or in an addendum at the end and they may be supplied to the court in pamphlet form.

(h) *Length of briefs.* Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the statement with respect to oral argument, any certificates of counsel, the table of contents, tables of citations, and any addendum containing statutes, rules, or regulations.

(i) *Briefs in cases involving cross-appeals.* If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief for appellee shall contain the issues involved in the appellee's appeal as well as the answer to the brief for appellant.

(j) *Briefs in cases involving multiple appellants or appellees.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(k) *Citation of supplemental authorities.* When pertinent and significant authorities come to the attention of counsel after the party's brief has been filed, or after oral argument or decision, the party may promptly advise the clerk of the Supreme Court, by letter with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(*l*) *Disrespectful language stricken.* Any brief containing language showing disrespect or contempt for the trial court will be stricken from the files, and the appropriate appellate court will take such further action as it may deem proper.

(m) *Other briefs.* Any brief submitted other than those listed in Rule 28(a), (b), (c), and (d) shall conform to Rules 28 (e), (f), (h), and (*l*). Any brief filed prior to the filing of the brief of the appellant shall contain a certificate of interested persons as required by Rule 28(a)(1). Any brief exceeding 10 pages in length shall contain tables of contents and authorities in compliance with Rule 28(a)(2).

(n) *Filing of Conventional Briefs on Electronic Media.* When filed conventionally, all parties filing a brief on the merits of any case with the Clerk of the Supreme Court shall file with that brief a copy thereof in an electronically formatted medium (such as USB Flash Drive or CD-ROM), and the Clerk shall receive and file such with the papers of that case. All electronic media and electronic files stored thereon must be in an industrial standardized format with the electronic brief stored in the Adobe Portable Document Format (PDF). All electronic media shall be labeled to include the following information:

(1) the style of the case,

(2) the number of CD-ROMs, i.e., "1 of 2, 2 of 2, etc." (Amended December 28, 1995; amended December 22, 1997; amended effective May 27, 2004, to make filing of briefs on electronic disks mandatory; amended effective August 18, 2007; amended effective July 1, 2009; amended effective August 2, 2012, to allow pro se supplemental briefs in criminal appeals; amended effective June 1, 2016, to require Statement of Assignment; amended effective June 20, 2016; amended effective October 25, 2018.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective December 11, 1997, Rule 28 was amended to delete various requirements regarding the form of citations. 702-705 So. 2d XLI-XLIII (West. Miss. Cases 1997).

Effective December 11, 1997, Rule 28 was amended to delete various requirements regarding the form of citations. 702-705 So. 2d XLI-XLIII (West. Miss. Cases 1997).

Effective December 28, 1995, Rule 28(m) and a new final paragraph to the Comment were added to encourage the filing of disk copies of briefs. 663-667 So. 2d XXVII (West Miss.Cases 1995).

Effective January 1, 1995, M.R.A.P. 28 replaced Miss. Sup. Ct. R. 28, embracing proceedings in the Court of Appeals. 644-647 So. 2d LXIV-LXVII (West Miss. Cases 1994).

Effective July 1, 1994, the Comment to Miss. Sup. Ct. R. 28 was amended to delete material concerning the transition from statutory procedures to Rule practice. 632-635 So. 2d LII (West Miss. Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1997; amended March 31, 1999; amended August 2, 2012.]

COMMENT

Rule 28 is based upon Fed. R. App. P. 28 and 5th Cir. R. 28.2.1, 28.2.2. If a party states issues under Rule 28(a)(3) not included in a statement required by Rule 10(b)(4), that party will bear responsibility for the cost of preparing any additional portions of the record subsequently designated by any other party in response to the statement of additional issues.

Article 3, section 26 of the Mississippi Constitution states that "[i]n all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both. . . ." Accordingly, pro se supplemental briefs are permitted under Rule 28(b). *See also Lindsey v. State,* 939 So. 2d 743 (Miss. 2005).

In cross-appeals, the response of the appellant to the cross-appeal is to be combined with the appellant's reply. The combined brief is treated as a principal brief under Rule 28(h) which governs page lengths.

Rule 28(f) requires parallel citations prior to 1967 because the Southern Reporter is the official reporter only for decisions published since 1966. Any party filing a brief citing an unreported decision from another court should also file a copy of the decision with the clerk of the Supreme Court.

Rule 28(f) adopts a citation standard which is in the public domain. The new citation standard is both vendor neutral and media neutral. A vendor neutral citation is one which does not contain vendor-specific information, and a media neutral citation is one which is not tied to a particular format. The citation Smith v. Jones, 699 So. 2d 100 (Miss. 1997), for example, is neither vendor neutral nor media neutral. However, the citation Smith v. Jones, 95-KA-01234-SCT (Miss. 1997) is both vendor neutral and media neutral. The basis for the adoption of a new citation standard is to allow citation of cases which appear in electronic format in addition to citation of cases which appear in print.

An original Rule 28(k) letter should be submitted with three copies. Rule 28(m) governs briefs other than briefs on the merits controlled by Rules 28(a), (b), (c), and (d).

The provisions of Rule 28(n) apply only to briefs on the merits of an appeal and not to memoranda and briefs filed in support of or in opposition to motions and petitions seeking less than relief on the merits of appeals.

[Amended December 28, 1995; December 22, 1997; amended effective May 27, 2004; amended effective July 1, 2009; amended effective August 2, 2012.]

JUDICIAL DECISIONS

Argument.
Clerical errors.
Failure to cite authority.
Failure to identify issues.
Failure to preserve error.
Indigent defendant.
Insufficient record.
No arguable issues.
Plain error.
Statement of issues.
Supplemental filings.

Argument.

Because the county board of supervisors provided no reasons for its contention that a taxpayer's refund claim was time barred, the supreme court did not address the argument. G4, Llc v. Pearl River Cty. Bd. of Supervisors, — So. 3d —, 2020 Miss. LEXIS 32 (Miss. Feb. 6, 2020).

Reversal was not warranted based upon the trial court's failure to issue a cautionary instruction, sua sponte, to the jury on their use of interview transcripts because defendant made no argument that he was deprived of a fair trial on the ground that the trial court did not issue a transcript-based cautionary instruction; nor was there any indication in the record that the absence of such a cautionary instruction deprived defendant of a fair trial. Brown v. State, — So. 3d —, 2019 Miss. App. LEXIS 468 (Miss. Ct. App. Sept. 24, 2019).

Because the claimant in a personal injury suit failed to address the issue of the mailing of the summons and complaint in the claimant's appellate brief, the claimant could not show that the trial court erred in finding that the service by mailing was ineffective. Thornton v. Freeman, 242 So. 3d 188 (Miss. Ct. App. 2018).

Potential due process issue was barred on appeal because appellant totally failed to address the issue; the due process question was one of first impression, and it had not been briefed or argued on appeal by either party. Young v. State, 245 So. 3d 510 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 886, 2018 Miss. LEXIS 287 (Miss. June 21, 2018).

Although defendant enumerated four issues in defendant's brief on appeal, defendant's identification of the issues did not always match the arguments defendant presented. Nonetheless, the appellate court did its best to address all of defendant's contentions even if they were not distinctly briefed. Ferrell v. State, 158 So. 3d 1204 (Miss. Ct. App. 2015).

Appellant did not separately number each issue in his brief, as required; the court will not address contentions that have not been distinctly identified in the statement of issues, nor did the court address contentions that had not been separately and distinctly argued. Russell v. Beachwalk Condominums Ass'n, 193 So. 3d 657 (Miss. Ct. App. 2016).

In a workers' compensation case, because a benefits applicant failed to provide any argument in a brief on the issue of whether the Mississippi Workers' Compensation Commission erred in finding that she did not suffer any permanent disability, the appellate court declined to address the issue. Perez v. Howard Indus., 150 So. 3d 141 (Miss. Ct. App. 2014).

Sanctions against a juvenile's counsel and parents were inappropriate because counsel's arguments did not suggest any disrespect for the youth court and counsel reasonably believed that the juvenile's punishment was unjustifiably harsh in light of the youth court's failure to give a definite term for the juvenile's probation. In the Interest of J.C.M., 135 So. 3d 210 (Miss. Ct. App. 2014).

Supreme court would not consider defendant's assignment of error because defendant provides no meaningful argument or support of his claim of error. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

Supreme court would not consider defendant's assignment of error because defendant provides no meaningful argument or support of his claim of error. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

Defendant's murder conviction and life sentence were appropriate because his appellate counsel filed a Lindsey brief and met the requirements of Miss. R. App. P. 28(a)(1)-(4), (7) and defendant made no effort to file an appellate brief with the court. Having reviewed the record, the appellate court agreed with defendant's counsel that there were no arguable issues for appeal. McBride v. State, 44 So. 3d 368 (Miss. Ct. App. 2010), writ of certiorari denied by 49 So. 3d 106, 2010 Miss. LEXIS 502 (Miss. 2010).

In an eminent domain case, a property owner cited many instances in which she believed the trial court erred, but the owner never asked for any specific relief regarding the errors the trial court may have committed; since no specific argument was made stating what relief the owner sought, the owner's cross-appeal was procedurally barred. Gulf South Pipeline Co., LP v. Pitre, 35 So. 3d 519 (Miss. Ct. App. 2009), reversed by, remanded by 35 So. 3d 494, 2010 Miss. LEXIS 199 (Miss. 2010).

In a rape case, the State's brief was inadequate under Miss. R. App. P. 28 because it was devoid of any arguments or case law, a significant portion of the State's brief merely contained block quotations from more than four pages of the trial transcript without any explanation to the relevance of such excerpts, there was no analysis connected with the block-quoted sections of the record, and the State ended its "discussion" of each issue with same sentence. Moreover, a section of the record excerpted by the State did not correlate to any argument raised within one issue set forth in defendant's brief. McGriggs v. State, 987 So. 2d 455 (Miss. Ct. App. 2008), writ of certiorari dismissed by 998 So. 2d 1010, 2008 Miss. LEXIS 641 (Miss. 2008).

Appellate court declined to treat counsel's appellate brief as a Lindsey brief because although counsel stated that defendant was unlikely to prevail on appeal, he did present a legal issue on which to base the appeal and then proceeded with an argument on the merits. Boykin v. State, 941 So. 2d 892 (Miss. Ct. App. 2006).

In a divorce and child custody action, the father contended that the chancellor misapplied the Albright factors, and as a result, the mother was erroneously awarded custody of the parties' daughter given the dramatic change in the daughter's appearance, behavior, and friends, an absence of supervision and guidance by the mother, and the mother's flagrant adulterous relationship. The father, however, failed to cite any authority to support his argument and the issue was procedurally barred. Sandlin v. Sandlin, 906 So. 2d 39 (Miss. Ct. App. 2004).

Defendant's claims of ineffective assistance of counsel in his trial for tax evasion lacked merit; defendant failed to cite any authority supporting the claim that his counsel's failure to request a change of venue demands reversal. Defendant also failed to cite any authority to support his argument that defense counsel rendered ineffective assistance by failing to make a challenge during jury selection. King v. State, 897 So. 2d 981 (Miss. Ct. App. 2004), writ of certiorari denied by 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

Defendant's argument that it was inadmissible hearsay for the trial court to have allowed several of the witnesses to give testimony concerning what the children said about who had caused the injuries to the boy was without merit because the issue was barred for defendant's failure to support the argument with citations to the authorities, statutes, and parts of the record relied upon, pursuant to Miss. R. App. P. 28(a)(6). Britt v. State, 844 So. 2d 1180 (Miss. Ct. App. 2003).

Court refused to address allegation of improper admission of hearsay statements where defendant neglected to state which hearsay statements were incorrectly admitted and failed to make an argument for his position as required by subsection (a)(6). Newell v. State, 754 So. 2d 1261 (Miss. Ct. App. 1999).

Clerical errors.

In an appeal in which defendant's appellate counsel filed a Lindsey brief, the appellate court found that there was no reversible error regarding defendant's convictions; however, it remanded the case to the circuit court to correct clerical errors related to defendant's sentence. Brown v. State, 166 So. 3d 565 (Miss. Ct. App. 2015).

Failure to cite authority.

Limited liability company principals waived a jury-instruction issue on appeal because the principals' briefing did not cite authority supporting the alleged error or identify the allegedly erroneous instructions. Home Sols. of Miss. Llc v. Ridge, — So. 3d —, 2020 Miss. App. LEXIS 64 (Miss. Ct. App. Mar. 3, 2020).

As a result of a son's failure to comply with the appellate rule, his argument that the trial court erred by denying his motion to disqualify opposing counsel was procedurally barred; the son did not support his argument with any citation to authorities, statutes, or parts of the record relied upon. Phillips v. Delta Reg'l Med. Ctr., — So. 3d —, 2020 Miss. App. LEXIS 27 (Miss. Ct. App. Feb. 4, 2020).

Absent the required reference to any supporting authority, statutes, or portions of the record that defendant relied on, the court of appeals declined review of the discovery purported errors. Hall v. State, — So. 3d —, 2019 Miss. App. LEXIS 610 (Miss. Ct. App. Dec. 17, 2019).

Because defendant provided no rationale or citations to authorities, statutes, or parts of the record regarding his arguments, they were procedurally barred. Hall v. State, — So. 3d —, 2019 Miss. App. LEXIS 610 (Miss. Ct. App. Dec. 17, 2019).

Because the party failed to cite any authority to support the allegation of error, it was not considered. Keeton v. Ocean Springs Sch. Bd., — So. 3d —, 2019 Miss. App. LEXIS 60 (Miss. Ct. App. Jan. 31, 2019).

Although appellant stated that appellee's brief should not have been considered because it was untimely, the appellate court did not consider the argument because appellant did not cite any authority for the proposition. Moreover, the issue was without merit as appellant did not file a motion to strike appellee's brief, nor did appellant allege that the four-day-late filing caused it any injustice or prejudice. Clinton Healthcare, LLC v. Atkinson, — So. 3d —, 2019 Miss. LEXIS 1 (Miss. Jan. 10, 2019).

Because a parent failed to cite authority or develop the parent's argument that a chancery court erred in assuming jurisdiction over a petition to enforce a child support order, the issue was waived. Burgess v. Williamson, 270 So. 3d 1031 (Miss. Ct. App. 2018).

Because defendant provided no authority to support his argument, the court of appeals was not obligated to address it. Ware v. State, 258 So. 3d 315 (Miss. Ct. App. 2018).

Circuit court properly denied appellant's motion for post-conviction relief because cited no authority to support his argument that it constituted ineffective assistance of counsel for defense counsel to give appellant erroneous advice regarding, or not to inform him of, any potential conditional release he could or could not receive if he were convicted of the greater offense with which he was charged. Ware v. State, 258 So. 3d 315 (Miss. Ct. App. 2018).

Defendant was properly convicted of possession of methamphetamine because he was caught with it clutched in his hand during a traffic stop, he essentially admitted to the offense while testifying in his own defense, his attorney examined the record and found no arguable appellate issues and informed defendant that he had the right to file a pro se supplemental brief, and defendant's letter in response contained no structured legal argument and no citations to authority. Davis v. State, 242 So. 3d 942 (Miss. Ct. App. 2018).

Neighbor's claims were procedurally barred because the neighbor cited nothing in support of his claim that he was entitled to personal service of process incident to a tax sale or a property owner's complaint to quiet and confirm title; likewise, the neighbor cited no authority that would support his ability to collaterally attack them through his appeal of an agreed judgment in the owner's favor. Alexander v. Pitts, 229 So. 3d 1073 (Miss. Ct. App. 2017).

Chancery court properly found that upon the wife's death, the subject property, which was held by the wife and the husband as joint tenants with the right of survivorship, vested in the husband because at the time that the wife filed her complaint to partition the property, the joint tenancy was still intact, and when she died, the property automatically transferred to the husband through the right of survivorship, the tenancy was never severed inasmuch as no decision had been made on the wife's partition action, and her administrator failed to cite to authority to support his proposition that the estate was entitled to a reimbursement of the property taxes that the wife and her mother paid. Seymour v. Turner, 228 So. 3d 343 (Miss. Ct. App. 2017).

Owners association's motion to strike a homeowner's brief was granted because the brief was full of language disrespectful to the chancellor, and it was based on matters outside the record on appeal; the homeowner cited no authority to show that any of the chancellor's rulings were erroneous, and nothing in the record reflected bias on the part of the chancellor. Hatfield v. Deer Haven Homeowners Ass'n, 234 So. 3d 1269 (Miss. 2017).

Defendant failed to support his assertion that a witness's testimony at trial varied from the oral statement the witness gave to police because the record was void of any transcription of the witness's oral statement to police, and the witness's photo-lineup identification of defendant was excluded from the record; defendant offered no facts or authority to suggest how the witness's lineup identification was improper. Shelby v. State, 242 So. 3d 885 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 70, 2018 Miss. LEXIS 223 (Miss. May 17, 2018).

Decedent's wife was not entitled to attorney's fees and expenses on appeal because in asserting her claim to attorney's fees and expenses, the wife failed to cite any relevant statutory law, caselaw, or rules; because the decedent's daughter asserted a nonfrivolous issue on appeal, and because the wife failed to cite relevant authority to support her claim, her request for attorney's fees and expenses on appeal was denied. Chester v. Labasse (In re Estate of Labasse), 242 So. 3d 167 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 70, 2018 Miss. LEXIS 192 (Miss. May 3, 2018).

Because a father did not specify the relief he was seeking, and he did does not cite any authority, the supreme court declined to address the issue. Edwards v. Zyla, 207 So. 3d 1232 (Miss. 2016).

Because a property owner failed to cite authority, its assignments of error were without merit. Russell Real Prop. Servs., LLC v. State, 200 So. 3d 426 (Miss. 2016).

Party claimed that without the corpus, the testamentary trusts had not been created, leaving the testamentary trustees with no power, yet the party gave no other citations to the record or law, elaboration, or explanation on the issue, nor did the party specify what relief she sought, and thus the issue was procedurally barred from appellate review. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291 (Miss. 2016).

Party did not provide a citation to authority or to the record, nor did the party provide a legitimate analysis that would have enabled the court to address the issue. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291 (Miss. 2016).

Fraud was never raised in the chancery court, and the party cited only one case in the discussion of the issue, yet the case did not even address fraud; the issue was not discussed on appeal. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291 (Miss. 2016).

Appellate court did not address a mother's argument the chancellor erred in finding that she came into chancery court with unclean hands because the mother did not cite any authority in support of her argument. Leake v. Leake, 196 So. 3d 1115 (Miss. Ct. App. 2016).

Because an employee failed to support her assertion with any explanation or authority in the argument sections of her opening brief or reply brief, the issue was procedurally barred. Weathersby v. Miss. Baptist Health Sys., 195 So. 3d 877 (Miss. Ct. App. 2016).

Appellant failed to cite any authority in support of one contention; as a result, he was barred from raising this issue on appeal. Backstrom v. Briar Hill Baptist Church, Inc., 184 So. 3d 323 (Miss. Ct. App. 2016).

Company claimed that the worker failed to support her assertions in this workers' compensation case with legal authority, contrary to the rule, and while the court was not required to consider the worker's claims on appeal, despite this procedural bar, the claims were meritless. Felter v. FloorServ Inc., 188 So. 3d 589 (Miss. Ct. App. 2015), writ of certiorari denied by 188 So. 3d 575, 2016 Miss. LEXIS 157, 2016 WL 1723135 (Miss. Apr. 14, 2016).

Appellate court declined to address an appellant's assignment of error because the appellant did not cite any authority to support the appellant's position. Williams v. Estate of Ellis, 176 So. 3d 133 (Miss. Ct. App. 2015).

Trial court properly denied defendant's motions for a directed verdict, a new trial, and a peremptory instruction because he had constructive possession of the gun found in the backpack that was within arms reach, the jury found a police investigator to be more credible in finding defendant guilty of being a felon in possession of a weapon, and his failure to cite authority supporting his claim of error in denying his request for a peremptory instruction constituted a procedural bar to review. Body v. State, 147 So. 3d 890 (Miss. Ct. App. 2014).

While appellant argued that the verdict finding him guilty of driving under the influence was against the weight of the evidence, appellant presented no meaningful argument or citation to authority in support of this contention. Because appellant's brief on this issue was found to be lacking, the issue was deemed abandoned. Oatis v. State, 146 So. 3d 1015 (Miss. Ct. App. 2014).

City's issue on cross-appeal was procedurally barred because the city cited no authority to support its argument; in its reply brief, the city distinguished authority cited by employees, but it still did not cite any authority to support its own argument on appeal. Prendergast v. City of Waveland, 146 So. 3d 1021 (Miss. Ct. App. 2014).

Procedural bar arose as to a school teacher's pro se appeal because the appeal was completely lacking authority or reasoned support. Procedural bar notwithstanding, the appellate court would still have found that the circuit court did not err in granting summary judgment. McGhee v. Young, 138 So. 3d 259 (Miss. Ct. App. 2014).

Although the unemployment benefits claimant filed his brief pro se, because pro se parties were held to the same rules of procedure and substantive law as represented parties, his failure to cite to a single authority in support of his arguments on appeal acted as a procedural bar to his claims, and they would not be addressed on appeal. Jones v. Miss. Dep't of Empl. Sec., 129 So. 3d 224 (Miss. Ct. App. 2013).

Appellants' mere mention of case law authority without any development of their appellate argument was insufficient to support their appeal of a declaratory judgment that allowed appellee to reenter and retake possession of a mobile home park, particularly in light of the fact that the case cited did not in fact support the position that appellants apparently wanted to take in their appeal. Stathos v. Lee County Rentals, LLC, 119 So. 3d 377 (Miss. Ct. App. 2013).

Supreme court declined to entertain defendant's assignment of error because defendant raised an issue for the first time on appeal and failed to support it with any meaningful argument or citation to the record. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

Supreme court declined to entertain defendant's assignment of error because defendant raised an issue for the first time on appeal and failed to support it with any meaningful argument or citation to the record. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

Since a mother failed to comply with Miss. R. App. P. 28(a)(6) by citing to legal authority supporting her claim that it was reversible error for a second chancellor to render judgment without consider testimony elicited before the first chancellor on the first day of the hearing prior to his recusal, she waived this issue on appeal. Kimbrough v. Kimbrough, 76 So. 3d 715 (Miss. Ct. App. 2011), writ of certiorari denied by 76 So. 3d 169, 2011 Miss. LEXIS 593 (Miss. 2011).

Supreme court suspended enforcement of Miss. R. App. P. 28(a) and considered the issues raised by a resident's attorney because although the resident was in violation of Rule 28(a)(6) since he cited no authority, his attorney's chancery-court brief complied with the rules, Green v. Cleary Water, Sewer & Fire Dist., 17 So. 3d 559 (Miss. 2009), writ of certiorari denied by 559 U.S. 971, 130 S. Ct. 1691, 176 L. Ed. 2d 181, 2010 U.S. LEXIS 2154, 78 U.S.L.W. 3498 (2010).

In a widow's bad-faith action against a workers' compensation insurance carrier, the carrier's argument that an instruction was erroneous was improper under Miss. R. App. P. 28(a)(6) because the carrier cited no authority for its argument that the jury instruction at issue was an incorrect statement of law or that the substantive portion of the instruction was somehow incorrect. AmFed Cos., LLC v. Jordan, 34 So. 3d 1177 (Miss. Ct. App. 2009).

Legal entities, which sought an easement allowing them to use one of two private roads located on adjoining proprety owner's land, were procedurally barred under Miss. R. App. P. 28(a)(6) from claiming an express easement because the legal entities failed to cite any authority in support of such argument. Evanna Plantation, Inc. v. Thomas, 999 So. 2d 442 (Miss. Ct. App. 2009).

Issue was neither discussed in a party's brief nor supported by any authority, and thus this issue was deemed abandoned and was not properly before the court on appeal. Kendrick v. Miss. Farm Bureau Ins., 996 So. 2d 132 (Miss. Ct. App. 2008).

On appeal from a judgment ordering defendants to vacate foreclosed property, defendants' claim that the circuit court erred in entering a judgment tantamount to a default judgment was procedurally barred under Miss. R. App. P. 28(a)(6) because defendants did not cite any authority for their arguments. Sorey v. Crosby, 989 So. 2d 485 (Miss. Ct. App. 2008).

In a manslaughter case, alleged errors relating to jury instructions were not reviewed based on a failure to cite to authorities in a brief; at any rate, after looking at the jury instructions as a whole, it was determined that they adequately stated the law and created no injustice or reversible error. Brown v. State, 970 So. 2d 1300 (Miss. Ct. App. 2007).

Employer failed to cite any authority for its position on whether all medical treatment relating to and subsequent to September 9, 2002, was not related to the September 4, 2002, syncope episode and was therefore not compensable; failure to comply with Miss. R. App. P. 28(a)(6) rendered an argument procedurally barred. Hinds County Bd. of Supervisors v. Johnson, 977 So. 2d 1193 (Miss. Ct. App. 2007), writ of certiorari denied by 977 So. 2d 1144, 2008 Miss. LEXIS 133 (Miss. 2008).

Where a corporation brought a successful action for a prescriptive easement, the landowner argued that the trial court should be reversed because the owner of the corporation was not joined in the action as an individual; the argument failed because the landowner cited no cases in support of the argument that misjoinder or nonjoinder warranted reversal. Graves v. Dudley Maples, L.P., 950 So. 2d 1017 (Miss. 2007).

Issue of prosecutorial misconduct regarding a statement he made in closing was procedurally barred under Miss. R. App. P. 28(a)(6) because defendant did not cite any authority for the alleged impropriety of the statement and did not suggest that the comment resulted in reversible error. Bailey v. State, — So. 2d —, 2006 Miss. App. LEXIS 508 (Miss. Ct. App. June 27, 2006), opinion withdrawn by, substituted opinion at, modified by 956 So. 2d 1016, 2007 Miss. App. LEXIS 112 (Miss. Ct. App. Feb. 27, 2007).

Failure to identify issues.

Although defendant failed to follow the requirement that each issue be separately numbered in a statement of the issues, the appellate court, nevertheless, considered defendant's claim of ineffective assistance of counsel. Kimble v. State, 270 So. 3d 940 (Miss. Ct. App. 2018).

While appellant mentioned in passing that he was wrongfully terminated, the issue itself was never discussed, much less argued with authority, by appellant in his brief, but the issue was addressed in any event. Lott v. Corinthian, Inc., 210 So. 3d 1024 (Miss. Ct. App. 2015).

To the extent an inmate obscured certain allegations by not separately identifying them, the appellate court was under no duty to address the claims; still, the appellate court attempted to respond to those it could decipher. Smith v. State, 118 So. 3d 180 (Miss. Ct. App. 2013).

Failure to preserve error.

Defendant effectively abandoned defendant's first motion for a new trial, alleging the verdict was against the overwhelming weight of the evidence, because defendant did not argue it in defendant's appellate brief and defendant did not mention it during oral argument. Ferguson v. State, — So. 3d —, 2019 Miss. App. LEXIS 600 (Miss. Ct. App. Dec. 17, 2019).

Mother waived her argument because she failed to brief it; the mother's brief addressed the issue in only two sentences. Heisinger v. Riley, 243 So. 3d 248 (Miss. Ct. App. 2018).

Appellate court declined to address, by utilizing plain error, the issue of whether defendant's right to a speedy-trial was violated because defendant failed to raise a speedy-trial issue at any time during defendant's trial or appeal. Flynt v. State, 183 So. 3d 1 (Miss. 2015).

Because pro se defendant did not cite to the record to direct the appellate court to the substance of defendant's claim that the circuit court should have conducted a balancing test under Miss. R. Evid. 403, the issue was procedurally barred. Thornton v. State, 141 So. 3d 5 (Miss. Ct. App. 2014), writ of certiorari dismissed by 146 So. 3d 981, 2014 Miss. LEXIS 465 (Miss. Sept. 11, 2014).

Appellant's brief failed to comply with Miss. R. App. P. 28 because the appellant's argument was based on matters that did not appear in the record and the appellant failed to support the appellant's argument with authority. The appellant's failure to cite any authority was a procedural bar, and a reviewing court was under no obligation to consider the appellant's assignment of error. Holt v. Miss. State Bd. of Dental Exam'rs, 131 So. 3d 1271 (Miss. Ct. App. 2014).

Appellant, by only raising and arguing three of the appellant's thirteen trial court claims on appeal, waived and abandoned the other ten claims on appeal. Ravenstein v. Cmty. Trust Bank, 141 So. 3d 396 (Miss. Ct. App. 2013).

In an armed robbery case, defendant's claim that his 19.5 year sentence was illegal because it exceeded his life expectancy was not properly preserved for review as he did not object at sentencing. The circuit court did not commit plain error under Miss. R. App. P. 28(a)(3), because defendant had a life expectancy of 20.2 years. Hampton v. State, 148 So. 3d 1038 (Miss. Ct. App. 2013), affirmed by 148 So. 3d 992, 2014 Miss. LEXIS 513 (Miss. Oct. 16, 2014).

In an appeal of a dismissal of a pro se state inmate's petition for post-conviction review in which the inmate took issue with the trial court's refusal to grant him an evidentiary hearing, he had not complied with Miss. R. App. P. 28(a)(6) since he did not offer any proof of error by the trial court on this issue. Consequently, that issue was procedurally barred. Taylor v. State, 29 So. 3d 134 (Miss. Ct. App. 2010).

Although defendant failed to preserve his sentencing claim, an appellate court properly considered it under Miss. R. App. P. 28(a)(3), finding that while the record was insufficient to sentence defendant, who was convicted of murder, as a habitual offender under Miss. Code Ann. § 99-19-83, since the record did not show that defendant had served two separate terms of at least one year in a state or federal penal institution, the error was harmless because there was sufficient evidence to sentence defendant as a habitual offender under Miss. Code Ann. § 99-19-81, and the resulting sentence was the same under either provision. Reed v. State, 31 So. 3d 48 (Miss. Ct. App. 2009), writ of certiorari denied by 29 So. 3d 774, 2010 Miss. LEXIS 151 (Miss. 2010).

When defendant's statements were offered into evidence, defendant joined an objection made by codefendant on the grounds of hearsay and the right to confrontation; defendant failed to object on the ground he raised on appeal — improper character evidence and waived any argument concerning character evidence when he failed to raise it in the trial court. Smith v. State, 986 So. 2d 290 (Miss. 2008).

Lower court's judgment affirming a life sentence on a felony shoplifting conviction was upheld where defendant had not raised his claims that he was improperly sentenced under Miss. Code Ann. § 99-19-83 (Rev. 2007) or that his sentence was disproportionate under the Eighth Amendment to the lower court and thus, the procedural bar applied. Sumrell v. State, 972 So. 2d 572 (Miss. 2008), writ of certiorari denied by 555 U.S. 952, 129 S. Ct. 414, 172 L. Ed. 2d 301, 2008 U.S. LEXIS 7462, 77 U.S.L.W. 3226 (2008), remanded by 607 F. Supp. 2d 748, 2009 U.S. Dist. LEXIS 30798 (N.D. Miss. 2009).

Circuit court's overruling of defendant's request for an appeal bond was procedurally barred under Miss. R. App. P. 28(a)(3) because defendant did not advance his argument in his initial brief and the record did not indicate that defendant ever placed his theory regarding his argument before the circuit court. Larson v. State, 957 So. 2d 1005 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 958 So. 2d 1232, 2007 Miss. LEXIS 318 (Miss. 2007).

Because the plaintiff offered no authority for his argument that a trial judge has no authority to raise the lack of proof of an essential element as justification for granting a motion for directed verdict, his argument was procedurally barred. Birrages v. Ill. Cent. R.R., 950 So. 2d 188 (Miss. Ct. App. 2006).

In a domestic relations action, the wife claimed the chancellor abused his discretion by granting the husband's motion for contempt, but she did not cite to the record or any relevant case law to demonstrate an instance when the chancellor abused his discretion. Likewise, the majority of the pleadings and motions referenced in her argument were absent from the record; although she was acting pro se, she was bound by the same rules of practice as an attorney, and her assertion was barred on appeal. Jacobs v. Jacobs, 918 So. 2d 795 (Miss. Ct. App. 2005), writ of certiorari denied by 920 So. 2d 1008, 2005 Miss. LEXIS 596 (Miss. 2005).

No plain error existed as to defendant's arguments concerning jury instructions where the jury was instructed on all of the essential elements of the crime of child exploitation by three jury instructions tracking the language of Miss. Code Ann. § 97-5-33(2); although one instruction was erroneously given, no injustice occurred as the jury instructions, when read as a whole, fairly announced the law of the case and did not create an injustice. Blackwell v. State, 915 So. 2d 453 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 1279, 2005 Miss. LEXIS 777 (Miss. 2005).

Defendant's argument that since the victim was the actual procurer of the obscene photographs, his conviction under Miss. Code Ann. § 97-5-33(2) was improper, was procedurally barred, Miss. R. App. P. 28(a)(6), because defendant's only source of authority was an opinion supporting nothing more than his assertion that he was convicted under an anti-pornography law. Minor v. State, 904 So. 2d 1164 (Miss. Ct. App. 2004).

Reviewing court was not required to review any issues that were not properly supported by reasons and authority; the victim's brief failed to cite any authority or make any reference to the record that would have supported his position, such that his issue was procedurally barred, and the driver's failure to object in the trial court to the introduction of the newspaper articles was fatal for purposes of preserving any error for appeal. O'Hara v. Robinson, 904 So. 2d 1110 (Miss. Ct. App. 2004).

In an action brought under the Mississippi Tort Claims Act, plaintiff cited no precedent or authority to prove that an ambulance driver was negligent as a matter of law in operating an ambulance during an emergency when she ran over plaintiff's foot and caused him to suffer damages. As such, the issue was procedurally barred and the court would not consider it on appeal. Albright v. Delta Reg'l Med. Ctr., 899 So. 2d 897 (Miss. Ct. App. 2004), writ of certiorari denied by 898 So. 2d 679, 2005 Miss. LEXIS 273 (Miss. 2005).

Where defendant failed to provide any legal support for his claim that the trial court had erred in failing to get the jury venire questions to defense counsel in a timely manner, the matter was waived. Gilmore v. State, 872 So. 2d 744 (Miss. Ct. App. 2004).

Court refused to address a patient's constitutional claims on appeal because they had not been raised first in the trial court. Southern v. Miss. State Hosp., 853 So. 2d 1212 (Miss. 2003).

Indigent defendant.

Defendant's counsel complied with the procedure that governed cases in which counsel for indigent defendants cound no arguable issues to present on appeal because counsel filed a brief stating that he examined the entire record; defendant's appellate counsel confirmed that he informed defendant that he found no arguable issues in the record and that he informed defendant of his right to file a pro se brief. Wilson v. State, 106 So. 3d 853 (Miss. Ct. App. 2013).

Appellate counsel complied with the procedures set forth in Lindsey because he filed a brief stating that he examined the entire record, including: (a) the reason for defendant's arrest and the circumstances surrounding the arrest, (b) any possible violations of defendant's right to counsel, (c) the entire trial transcript and content of the record, (d) all rulings of the trial court, (e) possible prosecutorial misconduct, (f) all jury instructions, (g) all exhibits, whether admitted into evidence or not, (h) possible misapplication of the law in sentencing, (i) the indictment and all the pleadings in the record, and any possible ineffective assistance of counsel issues; appellate counsel informed defendant of his right to file a pro se brief and requested additional time to allow him to file such a brief if he chose to do so, and defendant then filed a brief on his own behalf, asserting several errors in the trial court. Chatman v. State, 29 So. 3d 118 (Miss. Ct. App. 2010).

Mississippi Supreme Court overrules Turner v. State, 818 So.2d 1186 (Miss. 2001) in part, rectifying the Fourteenth Amendment problems with the procedure governing appeals by indigent criminal defendants by implementing a five part procedure that requires, inter alia, compliance with Miss. R. App. P. 28(a)(1)-(4), (7); because a brief submitted by defense counsel merely stated that the appeal had no merit, rebriefing of a burglary case on appeal was required. Neal v. State, 5 So. 3d 1166 (Miss. Ct. App. 2009).

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Insufficient record.

Affirmance of the dismissal of defendant's post-conviction relief motion was appropriate because defendant was required to demonstrate error on appeal and to provide an adequate record to support defendant's claims. However, defendant, who was represented by counsel, failed to present an adequate record to support defendant's contentions and defendant's post-conviction relief motion failed to identify the underlying proceedings with adequate certainty. Kent v. State, 269 So. 3d 401 (Miss. Ct. App. 2018), writ of certiorari denied by 256 So. 3d 595, 2018 Miss. LEXIS 473 (Miss. Nov. 29, 2018).

Finding in favor of a psychiatrist in a negligence action after the decedent killed herself was proper, in part because the personal representative had argued statements did not meet the trustworthiness requirements of Miss. R. Evid. 803(4). However, the representative failed to provide the supreme court with any directions as to the specific testimony at issue; without support from the record, the supreme court was not required to rule upon the merits of the representative's argument, Miss. R. App. P. 28(a)(6). Young v. Guild, 7 So. 3d 251 (Miss. 2009).

No arguable issues.

Appellate counsel's assertion that they had scoured the record and were unable to identify any arguable issues warranting appellate review and advising defendant of his right to file a pro se brief supported a finding that no arguable issues existed warranting reversal. Brooks v. State, — So. 3d —, 2019 Miss. App. LEXIS 505 (Miss. Ct. App. Oct. 22, 2019).

There were no arguable issues that required supplemental briefing or further review because defendant's counsel filed a brief in compliance with Miss. R. App. P. 28 and concluded that there were no issues that she could, in good faith, present for appellate review. Ware v. State, — So. 3d —, 2019 Miss. LEXIS 260 (Miss. July 25, 2019).

Defendant's appellate attorneys were permitted to withdraw from the attorneys' representation of defendant when the attorneys did not believe any arguable issues existed for appellate review because the attorneys filed a brief which stated that the attorneys had searched the record but were unable to find any arguable issues for appellate review. Furthermore, the attorneys sent a copy of the brief to defendant, informed defendant that defendant had the right to file a pro se brief, and defendant declined to file such a brief. Knight v. State, — So. 3d —, 2019 Miss. LEXIS 212 (Miss. May 30, 2019).

There were no arguable issues for appeal, and no supplemental briefing was required, because appellate counsel certified that, after scouring the record thoroughly, he found no arguable issues for appeal. Neely v. State, — So. 3d —, 2019 Miss. LEXIS 97 (Miss. Mar. 7, 2019).

Defendant's conviction for touching a child for lustful purposes was affirmed after counsel filed a brief in compliance with this rule, stating that there were no issues she could present in good faith for appellate review and defendant failed to file a pro se brief. Hollis v. State, — So. 3d —, 2019 Miss. App. LEXIS 38 (Miss. Ct. App. Jan. 29, 2019).

As set forth in appellate counsel's brief, after diligently searching the procedural and factual history, there were no arguable issues for appeal and no errors which were ultimately prejudicial to defendant, a finding which the appellate court agreed with, also indicating that there was sufficient evidence to support defendant's conviction. Solitro v. State, 246 So. 3d 941 (Miss. Ct. App. 2018).

Defendant's attorney complied with the procedure appellate counsel was required to follow after determining that the record contained no appealable issues because she filed a brief stating that she diligently searched the procedural and factual history of the criminal action and scoured the record and found no arguable issues for appeal. Thomas v. State, 246 So. 3d 925 (Miss. Ct. App. 2018).

Appellate counsel complied with the requirements of Lindsey v. State, by considering the effectiveness of trial counsel in failing to file a motion for JNOV/new trial and in stipulating that defendant was lawfully confined in jail on a felony charge and determined that he could not in good faith present the issue of ineffective assistance of counsel on appeal. Moore v. State, 242 So. 3d 959 (Miss. Ct. App. 2018).

Defendant was properly convicted of attempted felony motor-vehicle theft because the owner's wife and daughter identified defendant as the person they saw exit the vehicle, and the owner testified that his car was not for sale, he did not call anyone to come get the car, and no one had permission to enter his locked vehicle, and defendant's counsel and the appellate court found no arguable issues in the record. Bell v. State, 238 So. 3d 628 (Miss. Ct. App. 2018).

Circuit court properly convicted and sentenced defendant for burglary of an automobile because the record contained sufficient evidence to support the jury's finding that defendant was guilty of the charged offense, the appellate court found no arguable appellate issues in the case, and in so doing, found that defendant's appellate counsel complied with the requirements in Lindsey v. State, 939 So. 2d 743 (Miss. 2005), including a statement of the case and a statement of the facts with record citations and defendant failed to file a pro se brief. Presley v. State, 230 So. 3d 365 (Miss. Ct. App. 2017).

Defendant was properly convicted of aggravated assault with a firearm enhancement because his appellate counsel properly examined the record, found no arguable issues for appeal, sent a copy of his brief to defendant, advising him that he found no arguable issues in the record and informed defendant that he had the right to file a pro se supplemental brief, the appellate court granted defendant an additional 45 days to file a pro se brief, which he failed to do, and the appellate court's independent review of the record did not reveal any arguable issues that would require supplemental briefing. McCadney v. State, 230 So. 3d 334 (Miss. Ct. App. 2017).

Circuit court properly convicted defendant of aggravated assault with a firearm because the victim testified that after leaving the house of defendant's girlfriend, he saw defendant and another person on the street, defendant was standing under a streetlight, and when the victim turned and looked at defendant, defendant started shooting at him, the victim also identified defendant in court as the person who had shot him, defendant's appellate counsel filed a frivolous-appeal brief, the appellate court granted defendant an additional 40 days to file a pro se brief, which he failed to do, and the appellate court's independent review of the record did not reveal any arguable issues that would require supplemental briefing. Dillard v. State, 225 So. 3d 1211 (Miss. Ct. App. 2017).

Trial court properly convicted defendant of false pretense and conspiracy to commit false pretense as a habitual offender because defendant was the mastermind behind a check-cashing scheme involving several individuals and, while defendant alleged insufficient evidence, a verdict against the overwhelming weight of the evidence, judicial and prosecutorial misconduct, ineffective assistance of counsel, and an illegal sentence, his appellate attorney asserted that he conducted a good-faith inquiry into arguable issues for appeal, but ultimately could find none, and after reviewing the record, the appellate court also found no meritorious issues. Cannady v. State, 245 So. 3d 489 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 885, 2018 Miss. LEXIS 281 (Miss. June 14, 2018).

Defendant's attorney complied with all the requirements in withdrawing on appeal because counsel's brief stated that counsel diligently searched the procedural and factual history of the criminal action and scoured the record searching for any arguable issues which could be presented to the court on defendant's behalf in good faith for appellate review. Counsel also informed defendant that defendant had a right to file a pro se brief, and requested that defendant be granted additional time to file a pro se brief, if defendant desired to do so. Foster v. State, 221 So. 3d 1054 (Miss. Ct. App. 2017).

Defendant failed to show that his appellate counsel's performance was deficient because appellate counsel properly complied with the established procedure when appellate counsel believed there were no meritorious issues upon which to mount an appeal. Ford v. State, 205 So. 3d 1172 (Miss. Ct. App. 2016), writ of certiorari denied by 2017 Miss. LEXIS 115 (Miss. Mar. 23, 2017).

Defendant's conviction was affirmed because counsel (1) found no arguable appellate issues after examining the reason for defendant's arrest and surrounding circumstances, possible violations of the right to counsel, the entire trial transcript, all trial court rulings, possible prosecutorial misconduct, all jury instructions, all exhibits, admitted or not, any possible misapplication of the law in sentencing, the indictment and all pleadings in the record, any possible ineffective-assistance-of-counsel issues, any speedy-trial issues, any Fourteenth Amendment due-process issues, and any other possible reviewable issues, (2) sent defendant a copy of the brief, stating defendant's right to file a pro se brief, (3) defendant filed no brief, and (4) the appellate court's independent review revealed no arguable appellate issues requiring supplemental briefing. Bergeron v. State, 196 So. 3d 173 (Miss. Ct. App. 2016).

Defendant's appellate counsel filed a Lindsey brief, asserting that she had diligently searched the record and could not find any arguable issues for appellate review as she considered and examined the reason for defendant's arrest and the circumstances surrounding his arrest; any possible violations of defendant's right to counsel; the entire trial transcript and record; all rulings of the trial court, jury instructions and exhibits; possible misapplication of the law in sentencing; and whether the verdict was supported by the overwhelming weight of the evidence; and, after an independent review of the record, the appellate court agreed with defendant's appellate counsel. Matthews v. State, 192 So. 3d 378 (Miss. Ct. App. 2016).

Defendant's convictions were affirmed because his appeal presented no arguable issues, defendant's pro se brief raised no arguable issues and no supplemental briefing was warranted. Graves v. State, 216 So. 3d 1152 (Miss. 2016).

Defendant's conviction was affirmed because no arguable issues existed on appeal where he had filed a petition for a writ of mandamus requesting clarification of his sentence, his sentences clearly fell within the statutory limits, and the jury instruction at issue merely defined a statutory "dosage unit." Chester v. State, 201 So. 3d 506 (Miss. Ct. App. 2016), writ of certiorari denied by 203 So. 3d 1132, 2016 Miss. LEXIS 421 (Miss. Oct. 6, 2016).

Defendant's conviction and 20-year sentence for sexual battery were affirmed because no arguable issues existed on appeal where his appellate counsel complied with the appellate rules, and defendant received a 40-day extension of time to file a pro se supplemental brief, but failed to do so. Johnson v. State, 186 So. 3d 945 (Miss. Ct. App. 2016).

Defendant's appeal was deemed frivolous because his arguments were clearly without merit where no gunshot-residue evidence was presented at trial by either side, defendant waived his right to object an undisclosed witness or evidence and pointed to nothing in the record to support a finding that defense counsel failed to subpoena a witness whose testimony would be favorable and change the outcome at trial, and the trial was delayed due to defendant's request for a mental evaluation and his repeated failure to cooperate with the doctor who was immediately available to perform the evaluation, and the delay did not affect the eyewitnesses' ability to testify at trial. Claiborne v. State, 176 So. 3d 769 (Miss. 2015).

Trial court properly denied defendant's post-trial motions because his attorney complied with the requirements for frivolous appeals, and the trial court did not err in allowing the State to amend the indictment to properly reflect defendant's habitual-offender status where the amendment was of form rather than substance and only affected the sentence and not the underlying offenses for which defendant was tried. Swilley v. State, 160 So. 3d 719 (Miss. Ct. App. 2015).

Appellate counsel's brief, which stated that she had diligently searched the procedural and factual history of defendant's burglary prosecution but was unable to find any arguable issues, and which also outlined the specific issues she reviewed the record about, satisfied the requirements of this rule as well as the requirements for a Lindsey brief filing. McCarley v. State, 123 So. 3d 478 (Miss. Ct. App. 2013).

Denial of defendant's motion for a judgment notwithstanding the verdict or, in the alternative for a new trial, after his conviction for armed robbery was affirmed as defendant's Mississippi Office of Indigent Appeals attorney complied with Lindsey v. State, 939 So. 2d 743 (Miss. 2005), and Miss. R. App. P. 28(a) and certified that she had conducted a good-faith inquiry into arguable issues for appeal but could find none; counsel also obtained an extension of time for defendant to submit a pro se brief, but he failed to file a pro se brief. Hancock v. State, 102 So. 3d 1260 (Miss. Ct. App. 2012).

Plain error.

Even though defendant did not claim double jeopardy error on appeal, the Supreme Court of Mississippi exercised plain error review to correct any fundamental violation because the error impacted a fundamental right of defendant. Furthermore, procedural rules gave way to prevent a miscarriage of justice or misapplied law. Dancy v. State, — So. 3d —, 2020 Miss. LEXIS 8 (Miss. Jan. 16, 2020).

Although defendant did not challenge defendant's indictment or sentence on appeal, the appellate court reviewed the matters on appeal because the court could address plain errors it identified and defendant was indicted under a nonexistent code section and sentenced under another section. Hawkins v. State, 255 So. 3d 1264 (Miss. 2018).

Defendant's purported conviction for robbery was plain error because he had been indicted for burglary, not the entirely distinct crime of robbery, which was not a lesser-included offense of burglary, and a court could not make, alter, or substantively amend a felony indictment; defendant's conviction for robbery was a plain, clear, and obvious error that violated his fundamental rights and constituted a manifest miscarriage of justice. Pace v. State, 242 So. 3d 107 (Miss. 2018).

Defendant's manslaughter sentence was plain error, despite defendant submitting an instruction providing the harsher sentence, because (1) the sentence impacted a fundamental right, as the revised statute under which defendant was sentenced was not effective when the crime was committed, (2) the error was obvious, as it was not clear defendant relied on the greater sentence to escape a harsher penalty, and (3) the error affected the integrity of judicial proceedings, as defendant conceivably presumed a 20-year sentence would be applied and did not know a 30-year sentence was possible until after sentence was pronounced. Cozart v. State, 226 So. 3d 574 (Miss. 2017).

In a case involving multiple counts of being a felon in possession of a firearm, no plain error was shown because a trial court did not deviate from or misapply a legal rule in a plain, clear, and obvious way; a double jeopardy argument had not been raised or discussed in prior cases involving multiple counts of this offense. Green v. State, 183 So. 3d 28 (Miss. 2016).

After a guardianship account was drained, two wards were awarded damages in a suit against the bank for breaching its duty by allowing the funds on deposit to be converted without a court order; upon plain error review pursuant to Miss. R. App. P. 28(a)(3), the appellate court noted that the chancery court erred in not abiding by the parties' stipulations of fact regarding the amount of money the wards would have received from the guardianship account if none of the funds had been misappropriated. The appellate court reduced the younger ward's damages to take into account the $25,000 he recovered and the $47,000 in guardianship funds used to buy him a house. Williams v. Duckett (In re Duckett), 991 So. 2d 1165 (Miss. 2008).

Although a husband, in the portion of his brief arguing that his wife failed to provide testimony of a corroborating witness and, therefore, should not have been granted a divorce on the ground of habitual cruel and inhuman treatment, failed specifically to identify the issue, as required by Miss. R. App. P. 28(a)(3); the court addressed the claim because, such a claim, if meritorious, would have amounted to plain error. Shavers v. Shavers, 982 So. 2d 397 (Miss. 2008).

Motion for post-conviction relief was properly dismissed based on an allegation of in effective assistance of counsel because defendant was correctly informed of the 10-year maximum penalty for uttering forgery; however, the case was remanded for resentencing because plain error was committed when a trial court improperly imposed a 15-year sentence. Jefferson v. State, 958 So. 2d 1276 (Miss. Ct. App. 2007).

Appraiser's "plain error" argument that there was a conflict of interest with respect to the manner in which disciplinary proceedings were conducted failed because there was no evidence of bias or misconduct and no conflict between the investigation and adjudication process; no error, much less plain error under Miss. R. App. P. 28(a)(3), was present in the administrative process. Miss. Real Estate Appraiser Licensing & Certification Bd. v. Schroeder, 980 So. 2d 275 (Miss. Ct. App. 2007).

Concurrence attempted to raise an issue that was not addressed by either party; the appellate court did not address the issue because it was not plain error. Broady v. Miss. State Bd. of Architecture, 936 So. 2d 441 (Miss. Ct. App. 2006).

To convict for felony shoplifting under Miss. Code Ann. § 93-23-93 (6), (8), the State was required to prove as part of its case-in-chief and as an element of the charge, that defendant had twice previously been convicted of shoplifting within seven years. No such proof was offered, and while defendant testified on cross-examination that she had been convicted of shoplifting in 1999, there was no testimony or evidence that she had been convicted twice of shoplifting within seven years prior to the offense charged, nor was the jury instructed as to this; although defendant never moved for a directed verdict on the latter ground, nor did she raise it on appeal; reviewing the matter as plain error, the appellate court held that reversal on the felony shoplifting charge was warranted, but that entry of conviction for the second shoplifting offense was in order. Evans v. State, 919 So. 2d 231 (Miss. Ct. App. 2005).

Statement of issues.

Driver's argument that a default judgment had to be reversed was properly before the supreme court because the driver's statement of the issues in which he challenged the entry of default was a sufficient challenge to the default judgment. Tucker v. Williams, 198 So. 3d 299 (Miss. 2016).

Although a party's brief listed two issues, he only briefed the court on the first issue, and the court's discussion was limited to that issue. Bourgeois v. Estate of Parker (In re Estate of Parker), 13 So. 3d 877 (Miss. Ct. App. 2009).

Denial of a petition for post-conviction relief based on a guilty plea to the charge of manslaughter was not overturned on appeal due to defendant's insufficient brief, failure to cite authority, insufficient record, and lack of affidavits, in violation of Miss. Code Ann. § 99-39-9(1)(e) and

Miss. R. App. P. 28(a)(6). Hill v. State, 940 So. 2d 972 (Miss. Ct. App. 2006).

Appellate court invoked the plain error doctrine in order to correctly reflect that defendant's conviction under Count III was to be manslaughter instead of murder, as set out in the trial court's sentencing order and defendant's notice of criminal disposition to the Mississippi Department of Corrections. Bryant v. State, 844 So. 2d 1153 (Miss. 2003).

An appellate court reviewing the denial of a motion for postconviction relief is not required to engage in an in-depth analysis of the entire record based solely upon overly broad and uninformative conclusory allegations to attempt to discover some aspect of the proceeding in the court below that might arguably fit within the assertions of the defendant's brief. Pinter v. State, 795 So. 2d 587 (Miss. Ct. App. 2001).

The court used its power to suspend the operation of the rules for good cause where the appellant failed to list an issue in the statement of issues in his brief, but the issue was listed in the table of contents as a separate issue and presented separately in the body of the brief. Starks v. State, 798 So. 2d 562 (Miss. Ct. App. 2001).

Supplemental filings.

County's supplemental authorities were not submitted appropriately under Miss. R. App. P. 28(j) where the county failed to submit the authorities in letter form, and it failed to reference an appropriate reason for authorities under Rule 28(j). Favre v. Jourdan River Estates, 148 So. 3d 361 (Miss. Oct. 9, 2014).

Wife's motion to strike a husband's supplemental brief was granted because the husband filed his supplemental brief in violation of subsection (d) and failed to comply with the procedures of supplemental citation provided by subsection(k); the wife complied with those rules and made the supreme court aware of the supplemental authority at issue. Huseth v. Huseth, 135 So. 3d 846 (Miss. 2014).

Appellate court would not consider defendant's claim that he was denied effective assistance of counsel where the claim was raised in an unauthorized pro se brief. Crawford v. State, 839 So. 2d 594 (Miss. Ct. App. 2003).

Appellate court refused to accept a supplemental pro se brief filed by defendant after defendant's counsel had briefed issues concerning defendant's conviction of armed robbery; case was considered on counsel's brief alone. Stevens v. State, 840 So. 2d 785 (Miss. Ct. App. 2003).

Twenty-six page "supplemental brief," setting forth new legal argument and authorities in support thereof, was filed out-of-time and was not allowed. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997).

Cited in Rucker v. State, 909 So. 2d 137 (Miss. Ct. App. 2005).

Rule 29. Brief of an *amicus curiae*.

(a) *Grounds for filing.* A brief of an *amicus curiae* may be filed only by leave of the appropriate appellate court, except that leave shall not be required when the brief is presented by the state and sponsored by the Attorney General or by a guardian *ad litem* who is not otherwise a party to the appeal. A motion for leave shall demonstrate that (1) *amicus* has an interest in some other case involving a similar question; or (2) counsel for a party is inadequate or the brief insufficient; or (3) there are matters of fact or law that may otherwise escape the court's attention; or (4) the *amicus* has substantial legitimate interests that will likely be affected by the outcome of the case and which interests will not be adequately protected by those already parties to the case.

(b) *How and when filed.* A motion for leave to file an *amicus* brief shall be filed no later than seven (7) days after filing of the initial brief of the party whose position the *amicus* brief will support. The motion must be accompanied by the proposed brief of *amicus curiae* which shall be a concise statement not to exceed 15 pages. The party filing the motion shall also file with the motion a brief stating why the motion satisfies the requirements of Rule 29(a).

(c) *Response to motion.* An opposing party who does not object to the motion for leave may respond to the *amicus* brief in the opposing party's response or reply brief pursuant to Rule 28(c) or 28(d). An opposing party who objects to the motion for leave shall file a response in opposition within seven (7) days pursuant to Rule 27 stating why the requirements of Rule 29(a) have not been met. For the purpose of Rule 31(a), the time for filing the next brief will run from the date the appropriate court enters an order on the motion for leave.

(d) *Oral argument.* A motion of *amicus curiae* to participate in oral argument will be granted only for extraordinary reasons. (Amended effective June 27, 2002; amended effective August 2, 2012.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 29 replaced Miss.Sup.Ct.R. 29, embracing proceedings in the Court of Appeals. 644-647 So.2d LXVII-LXIX (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 29 was amended to effect technical changes. 632-635 So.2d LII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 29 is patterned on Fed.R.App.P. 29, 5th Cir.R. 31.2, Ala.R.App.P. 29, U.S.Sup.Ct.R. 36, and the former rules of the Mississippi Supreme Court.

Briefs of an *amicus curiae* are allowed under this rule consistent with the accepted view that such briefs, in appropriate cases, are of genuine assistance to the court and facilitate a more thorough understanding of the facts and law. *Taylor v. Roberts*, 475 So. 2d 150 (Miss. 1985). Under this rule, any person may move for leave to file an *amicus* brief. The appropriate court will consider motions filed under this rule pursuant to the considerations set out in subdivision (a). The State of Mississippi, through the Attorney General, however, need not obtain permission of the Court to appear as an *amicus curiae*. The court may also invite *amicus* briefs from persons the Court perceives may be affected by the outcome of the case. *See Warren County v. Culkin*, 497 So. 2d 433, 435-36 (Miss. 1986).

The rule follows federal practice by integrating *amicus curiae* briefs into the schedule for filing briefs on the merits. The motion with attached *amicus brief need not be filed, however, until seven days after the initial brief of the party whose position the amicus* brief will support. This delay permits the *amicus* to take advantage of Rule 28(j) and adopt by reference portions of the brief of that party. It also ensures the *amicus* will know what the party's brief contains. It is designed to discourage the filing of repetitive briefs that cannot satisfy Rule 29(a).

The opposing party may choose not to oppose the motion and may respond to the *amicus* brief in the party's next brief. If the opposing party files a response in opposition within seven days as required by Rule 27, the time for filing the next brief is rescheduled and does not begin to run until the date the court enters an order on the motion for leave. The response in opposition is to address only whether leave should be granted under Rule 29(a). The party opposing the motion will respond to the merits of the *amicus* brief in that party's next brief only if the motion for leave is granted. The former practice of a separate brief in response to the *amicus* brief is abolished. If the court grants leave to file, however, it may condition leave by extending the number of pages permitted under Rule 28(h) for the opposing party's next brief.

Under Rule 27, a motion for leave to file an *amicus* brief is decided by a single justice.

[Amended effective August 2, 2012.]

Rule 30. Record excerpts.

(a) *Mandatory record excerpts.* Appeals shall be on the record as designated pursuant to Rule 10. Also, at the time of filing appellant's brief, appellant shall file copies of the following portions of the trial court record, to be indexed and bound together, but not in the brief:

(1) a true copy of the trial court docket

(2) the judgment or interlocutory order appealed from;

(3) all other orders or rulings sought to be reviewed; and

(4) all supporting opinions, findings of fact or conclusions of law filed or delivered orally by the trial court.

When filed conventionally, appellant shall file four (4) bound copies of the record excerpts.

(b) *Optional record excerpts.* Appellant may add to the mandatory record excerpts brief extracts from the pleadings, instructions, transcript, or exhibits if they are essential to an understanding of the issues raised.

At the time the appellee's brief is filed, the appellee may add other such extracts by filing copies of the same with an index and separately bound in a like manner, and labeled "Appellee's Record Excerpts." When filed conventionally, appellee shall file four (4) bound copies of Appellee's Record Excerpts.

(c) *Exemption from requirements of rule for inmate appeals.* The requirements of this rule are not applicable to appeals filed *pro se* by inmates of a facility of the Department of Corrections. (Amended effective June 27, 2002; amended effective October 25, 2018.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 30 replaced Miss.Sup.Ct.R. 30. 644-647 So.2d LXIX (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 30 was amended to delete material concerning the transition from statutory procedures to Rule practice. 632-635 So.2d LII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

The requirement for record excerpts with the provision for optional additions is modeled upon 5th Cir.R. 30.1.

All parties are cautioned that Rule 30(b) allows optional record excerpts that are essential to an understanding of the issues raised. If non-essential materials are included in the record excerpts, its usefulness to the court as a convenient adjunct to study of the briefs will be diminished. The fact that parts of the record are not included in the record excerpts shall not prevent the parties or the court from relying on such parts. The court will have before it the entire designated record when making its decision.

JUDICIAL DECISIONS

Matters outside record.
Supplementation of the record.

Matters outside record.

Owners association's motion to strike a homeowner's brief was granted because the brief was full of language disrespectful to the chancellor, and it was based on matters outside the record on appeal; the homeowner cited no authority to show that any of the chancellor's rulings were erroneous, and nothing in the record reflected bias on the part of the chancellor. Hatfield v. Deer Haven Homeowners Ass'n, 234 So. 3d 1269 (Miss. 2017).

Supplementation of the record.

Although defendant included as a record excerpt an affidavit of defendant's attorney in an effort to attach new exhibits that were not part of the record on appeal, defendant was prohibited from supplementing the record in this way. Defendant's efforts to include documents into the record on appeal without following the rules and then use those documents in an argument was not an acceptable practice. Day v. State, — So. 3d —, 2019 Miss. App. LEXIS 559 (Miss. Ct. App. Nov. 14, 2019).

Rule 31. Filing and service of briefs.

(a) *Notice of briefing schedule.* Immediately upon filing of the record in the office of the clerk of the Supreme Court, the clerk shall notify counsel of the filing of the record. However, failure of the clerk to give, or of a party to receive, notice of the filing of the record shall not excuse any delay in filing briefs.

(b) *Time for filing and service of briefs.* The appellant shall serve and file the appellant's brief within 40 days after the date on which the record is filed. The appellee shall serve and file the appellee's brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee. In cross-appeals, the appellant and cross-appellee may serve and file a combined responsive brief within 30 days after service of the combined brief of the appellee and cross-appellant. The cross-appellant's reply under Rule 28(d) may then be served within 14 days after service of the appellant's combined responsive brief.

(c) *Number of Conventionally Filed Copies.* When filed conventionally, an original and three (3) copies of all briefs shall be filed with the clerk. In cases in which the appellant has been sentenced to suffer the death penalty, the party shall file the original and nine (9) copies of all briefs. The Supreme Court or the Court of Appeals may require that additional copies be furnished.

(d) *Consequences of failure to file briefs.* If an appellant fails to file the appellant's brief within the time provided by this rule or within the time as extended, the appeal may be dismissed on motion of appellee or on the Supreme Court's own motion as provided in Rule 2. If an appellee fails to file the appellee's brief as required, such brief, if later filed, may be stricken from the record on motion of appellant or on the motion of the appropriate appellate court. An appellee who fails to file a brief will not be heard at oral argument except by permission of the court.

(e) *Suspension of briefing.* When ordered by the Supreme Court, the clerk shall suspend the briefing schedule. The clerk may suspend the briefing schedule in response to a filing or other action which affects the record or the briefing process, or when suspension is not opposed by any party. (Adopted to govern matters filed on or after January 1, 1995; amended effective August 2, 2012; amended effective October 25, 2018.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 31 replaced Miss.Sup.Ct.R. 31, embracing proceedings in the Court of Appeals. Rule 31(c) was further amended to enhance clarity. 644-647 So.2d LXX (West Miss.Cases 1994).

Effective July 1, 1994, the last sentence of the Comment to Miss.Sup.Ct.R. 31 was deleted. 632-635 So.2d LIII (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective August 2, 2012.]

COMMENT

Rule 31 is based on Fed. R. App. P. 31, and the former rules of the Supreme Court. Under Rule 25(a), briefs and record excerpts are deemed filed on the day of mailing by first class mail with postage prepaid, or any more expeditious form of delivery. Under Rule 26(c), service by mail adds three days to the prescribed period.

JUDICIAL DECISIONS

Deficiencies.
Failure to file brief.
Supplemental filings.
Timely filing.

Deficiencies.

Nowhere did it appear that the circuit clerk gave appellant written notice of his deficiencies in his appeal and fourteen days in which to cure any deficiencies before the circuit court dismissed his appeal from a decision of the Mississippi Department of Employment Security's Board of Review. Therefore, the circuit court erred in dismissing the appeal. Pilate v. Miss. Dep't of Empl. Sec., — So. 3d —, 2019 Miss. App. LEXIS 319 (Miss. Ct. App. July 16, 2019).

Failure to file brief.

Because the State of Mississippi failed to file an opposing brief, no alternative to reversal was proposed to the court on appeal. Newell v. State, — So. 3d —, 2019 Miss. App. LEXIS 335 (Miss. Ct. App. July 23, 2019).

Supplemental filings.

Twenty-six page "supplemental brief," setting forth new legal argument and authorities in support thereof, was filed out-of-time and was not allowed. Mississippi Gaming Comm'n v. Board of Educ., 691 So. 2d 452 (Miss. 1997).

Timely filing.

Although appellant stated that appellee's brief should not have been considered because it was untimely, the appellate court did not consider the argument because appellant did not cite any authority for the proposition. Moreover, the issue was without merit as appellant did not file a motion to strike appellee's brief, nor did appellant allege that the four-day-late filing caused it any injustice or prejudice. Clinton Healthcare, LLC v. Atkinson, — So. 3d —, 2019 Miss. LEXIS 1 (Miss. Jan. 10, 2019).

City's failure to file an appellate brief did not require that defendant's conviction be reversed because the record was not complicated or large in volume, and the basis of the conviction was unmistakable. Drabicki v. City of Ridgeland, 130 So. 3d 113 (Miss. Ct. App. 2013).

Grandmother's appeal was timely where an immediate appeal of a denial of an application for leave to intervene under Miss. R. Civ. P. 24 was not required and the father did not file a brief in the current appeal, Miss. R. App. P. 31(d). S.G. v. D.C., 13 So. 3d 269 (Miss. 2009).

Court did not err when it did not strike a brief as being untimely filed because: (1) the brief was filed on October 17, 2006, and the party's motion for extension of time was filed on November 16, 2006; (2)

on February 14, 2007, the court granted twenty more days to file the brief, and the party filed its brief on March 6, 2007; (3) the party filed its motion for an extension of time within the prescribed 30-day time limit; and (4) the court granted an extension through March 6, 2007, because March 5, 2007, was a Sunday. Franklin v. BSL, Inc., 987 So. 2d 1050 (Miss. Ct. App. 2008).

In employee's personal-injury action, although his brief was filed after the deadline, the supreme court never gave him notice of the alleged default and his brief was filed only two days after the deadline, and according to Miss. R. App. P. 2(a)(2) well within the 14 days, and the supreme court permitted parties to correct a deficiency; therefore, the employee's appeal was not dismissed. Green v. Allendale Planting Co., 954 So. 2d 1032 (Miss. 2007).

Trial court did not abuse its discretion in dismissing the residents' appeal of the city's grant of a special use permit to the humane society as the residents did not file their brief by the time set forth Miss. Unif. Cir. & County Ct. Prac. R. 5.06, and Miss. R. App. P. 31(d) authorized the dismissal of appeals for failing to timely file a brief. Truax v. City of Gulfport, 931 So. 2d 592 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 334 (Miss. 2006).

The appellant acted at its own peril in failing to ensure that the record on appeal was properly transferred from one county circuit court to another and that its brief was timely filed and, therefore, the appeal was properly dismissed. Zurich Am. Ins. Co. v. Beasley Contr. Co., 779 So. 2d 1132 (Miss. Ct. App. 2000).

An appeal was properly dismissed where the appellant filed his brief 54 days after filing the record with the circuit court, offered no reasons why his brief should be considered after the deadline for filing, and did not respond to the appellees' motion to dismiss for exceeding the filing deadline. Russell v. Mitchell-Putnam Signs, 754 So. 2d 1256 (Miss. Ct. App. 1999).

Appellate court's issuance of a decision prior to the expiration of the 40 day period for the appellants to file a brief resulted in harmless error; the role of the appellate court is merely to review the record to determine whether substantial evidence supported the lower court's decision, and a failure to read both parties' briefs did not interfere with the appellate court's duties. Bailey v. Bryant, 734 So. 2d 301 (Miss. Ct. App. 1999).

Rule 32. Form of briefs, record excerpts and other papers.

(a) *Form of briefs and record excerpts.* Briefs and record excerpts may be produced by standard commercial printing or by any duplicating or copying process which produces a clear black image on white paper. The text in the body of briefs shall appear in at least 12 point type; the text of footnotes must appear in at least 11 point type.

When filed conventionally, briefs and record excerpts shall be bound in volumes and shall be typed on one side of the page only and shall be in black non-copying ink on white paper without the name of any person or advertising matters on the paper. Pages of briefs shall not exceed 8 ½ by 11 inches with margins of 1 ½ inches on the left, 1 inch on the top, ¾ of an inch on the bottom, and ½ inch on the right, with double spacing between each line of text, excluding quotations and footnotes. All pages shall be numbered.

It is preferred that briefs and record excerpts be bound so as to permit them to lie flat when opened, and they must be so bound if the cover is plastic or any material not easily folded.

The cover of the brief of the appellant shall be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. In cross-appeals, the reply brief of appellant shall be combined with the brief of cross-appellee, and the combined brief shall be red. The reply brief of cross-appellant shall be gray. The cover of the record excerpts shall be white. The front covers of the briefs and of record shall contain: (1) the caption, name of the court and the number of the case; (2) the style (title) of the case [see Rule 13(a)]; (3) the nature of the proceeding (e.g., Appeal; Interlocutory Appeal; Petition for Writ of Prohibition) and the name of the court or commission below; (4) the title of the document (e.g., Brief for Appellant, Record Excerpts); (5) the names, bar numbers, addresses and business telephone numbers of counsel representing the party on whose behalf the document is filed, and (6) a statement on the cover of a brief filed by each party that oral argument is or is not requested. See M.R.A.P. 34(b).

(b) *Form of other papers.* Motions for rehearing shall be produced in a manner prescribed by Rule 32(a) and Rule 28(m), and motions and other papers may be produced in like manner. When filed conventionally, or they may be typewritten upon opaque, unglazed paper, 8 ½ by 11 inches in size. Lines of typewritten text shall be double spaced except for quotations and footnotes. Consecutive sheets shall be attached at the top left corner.

A motion or other paper addressed to either the Court of Appeals or the Supreme Court shall contain a caption setting forth the name of the court, the style (title) of the case, the tracking or docket number, and a brief descriptive title indicating the purpose of the paper. Prior to notification by the clerk that the case has been assigned to the Court of Appeals, all pleadings shall be captioned in the name of the Supreme Court. A motion filed after notice of assignment to the Court of Appeals shall be captioned with the name of that court. (Amended effective May 27, 2004 to revise the size of fonts in the text of briefs; amended effective April 19, 2007; amended effective August 2, 2012; amended effective October 25, 2018.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective September 18, 1997, Rule 32(b) was amended to effect technical changes. 699-701 So. 2d XXIX (West Miss. Cases 1997).

Effective February 10, 1995, the Comment to Rule 32 was amended to provide that appellant's reply, not principal, brief must state whether oral argument is requested. 648 So.2d XXXII-XXXIII (West Miss.Cases 1995).

Effective January 1, 1995, Miss.R.App.P. 32 replaced Miss.Sup.Ct.R. 32, embracing proceedings in the Court of Appeals. Rule 32(b) and the Comment were further amended to provide that the cover of a brief filed by each party must state whether oral argument is requested. 644-647 So.2d LXXI-LXXII (West Miss.Cases 1994).

[Adopted August 21, 1996; amended March 31, 1999.]

COMMENT

Rule 32 is based on Fed. R. App. P. 32, 5th Cir. R. 32, and the former rules of the Supreme Court. The Rule changes former Supreme Court practice in that it requires the appellant and the appellee to designate on the cover of the reply brief of the appellant and the principal brief of the appellee whether or not oral argument is requested. See M.R.A.P. 34(b).

[Amended February 10, 1995.]

Rule 33. Prehearing conference.

At any time after the filing of a notice of appeal, the Supreme Court or the Court of Appeals may direct the attorneys for the parties to appear before the court, a justice of the Supreme Court or a judge of the Court of Appeals, or a person designated by the appropriate court for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court, including settlement. The court, justice, judge, or person designated shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel. Such order, when entered, controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 33 replaced Miss.Sup.Ct.R. 33, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 33 is similar to Fed. R. App. P. 33. The prehearing conference can be a valuable tool in simplifying complex appeals or in promoting settlement in a manner similar to the pretrial conference used at the trial level.

JUDICIAL DECISIONS

Criminal cases.

This rule was not intended to facilitate post-trial settlement or "plea bargains" in criminal cases by the appellate courts. Jenkins v. State, 733 So. 2d 833 (Miss. 1999).

Rule 34. Oral argument.

(a) *When allowed.* Oral argument will be had in all death penalty cases. In all other cases, oral argument will be allowed unless the court, or the panel to which the case is assigned, unanimously agrees that:

(1) the appeal is frivolous; or

(2) the dispositive issue or set of issues has been recently authoritatively decided; or

(3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) *When requested.* Any party desiring to be heard orally shall so state on the cover of his brief (*e.g.*, ORAL ARGUMENT REQUESTED). Parties not seeking oral argument must also so note: ORAL ARGUMENT NOT REQUESTED. The appellee shall make this notation on his principal brief; the appellant shall make this notation on his reply brief or, if no reply brief is filed, by letter within the time allowed for filing of the reply brief. The party requesting oral argument shall, in his or her brief or letter, include a concise statement of the reasons that oral argument will be helpful to the court. Unless a party desiring oral argument complies with this requirement, he shall not be heard orally except by special permission or order of the appropriate appellate court. By agreement of the parties, a case may be submitted for decision on the briefs, but the appropriate appellate court may direct that the case be argued.

(c) *Notice of argument; postponement.* At least 14 days before the date set for argument, the clerk shall serve on counsel of record notice of the time and place for argument, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(d) *Time allowed for argument.* Each side shall be allowed 30 minutes for argument, unless otherwise ordered by the court. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(e) *Order and content of argument.* The appellant is entitled to open and to conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records, or authorities. The court may, in its discretion, advise the parties of the points upon which the court would like to hear argument.

(f) *Cross and separate appeals.* A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the appellate court otherwise directs. If a case involves a cross-appeal, the party first filing a notice of appeal shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(g) *Non-appearance of parties.* If the appellee fails to appear to present argument, the court may hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order. If a party or attorney who requested the oral argument fails to appear or present argument, the court may assess a penalty in the amount of the reasonable cost for appearance incurred by the party or the attorney for the party who does appear for argument. In its discretion, the court may include a reasonable attorney's fee as a part of such costs, and assess such other sanctions as may be appropriate.

(h) *Use of physical exhibits at argument; removal.* If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 34 replaced Miss.Sup.Ct.R. 34, embracing proceedings in the Court of Appeals. In addition, a new subsection (b) was added, altering the procedure by which a party may request oral argument; the Comment was also amended to reflect this change. 644-647 So.2d LXXII-LXIV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 34 is based on Fed. R. App. P. 34, Ala. R. App. P. 34, and the former rules of the Supreme Court. If counsel has a conflicting prior trial setting at the time counsel receives a notice of oral argument under Rule 34(b), counsel should immediately notify the clerk of the Supreme Court of the conflict. *See Leonard v. Leonard*, 486 So. 2d 1240, 1241-1242 (Miss. 1986).

Rule 35-A. Written opinions and entry of judgment in the Supreme Court.

(a) *Written opinions.* The Supreme Court may write opinions on all cases heard by that Court and shall publish all such written opinions. In cases where the judgment of the trial court is affirmed, an opinion will be written in all cases where the Supreme Court assesses damages for a frivolous appeal and in other cases if a majority of the justices deciding the case determine that a written opinion will add to the value of the jurisprudence of this state or be useful to the parties or to the trial court.

(b) *Citation of unpublished opinions.* Opinions in cases decided prior to the effective date of this rule which have not been designated for publication shall not be cited, quoted or referred to by any court or in any argument, brief or other materials presented to any court except in continuing or related litigation upon an issue such as res judicata, collateral estoppel or law of the case.

(c) *Per curiam affirmance.* The Court, with the concurrence of all justices participating in the case, may affirm the action of the trial court without rendering a formal opinion when an opinion would have no precedential value and one or more of the following circumstances exist and are dispositive of the appeal:

(1) the Court concurs in the facts as found or as found by necessary implication by the trial court;

(2) there is material evidence to support the verdict of the jury;

(3) no reversible error of law appears.

(d) *Entry of judgment.* The notation of a judgment in the minute book of the Supreme Court constitutes entry of the judgment. The clerk of the Supreme Court shall enter the judgment following receipt of the opinion and judgment of the Court. If a judgment is rendered without an opinion, the clerk shall enter the judgment following instruction from the appropriate court. (Amended July 25, 1996; amended effective November 1, 1998.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective July 25, 1996, Rule 35-A(c) was deleted and Rules 35-A(d) and (e) were renumbered accordingly. 673-678 So.2d XLIV (West Miss. Cases 1996).

[Amended effective July 1, 1998.]

JUDICIAL DECISIONS

Exception.
Per curium opinion.

Exception.

Exception allowing citation of unpublished opinions applies when res judicata, collateral estoppel, or law of the case is invoked in subsequent litigation by or against one of the parties to the case for which the unpublished opinion was written. Boyd v. State, 801 So. 2d 691 (Miss. 2001).

Per curium opinion.

Because a case was a per curiam opinion, the facts of the case and the supreme court's reasoning were unknown; therefore, the supreme court declined to construe the case to bar recovery. Singing River Health Sys. v. Vermilyea, 242 So. 3d 74 (Miss. 2018).

Rule 35-B. Written opinions and entry of judgment in the Court of Appeals.

(a) *Written opinions in the Court of Appeals.* The Court of Appeals may write opinions on all cases heard by that court and shall publish all such written opinions. In cases where the judgment of the trial court is affirmed, an opinion will be written in all cases where the Court of Appeals assesses damages for a frivolous appeal and in other cases if a majority of the judges deciding the case determine that a written opinion will add to the value of the jurisprudence of this state or be useful to the parties or to the trial court.

(b) *Citation of unpublished opinions.* Opinions in cases which have not been designated for publication shall not be cited, quoted or referred to by any court or in any argument, brief or other materials presented to any court except in continuing or related litigation upon an issue such as res judicata, collateral estoppel or law of the case.

(c) *Publication of Court of Appeals' opinions.* An opinion may be published only after it is final. An opinion of the Court of Appeals is final where: (i) no motion for rehearing is filed pursuant to Rule 40 or,(ii) where a motion for rehearing is timely filed and the motion for rehearing is denied. The filing of a petition for writ of certiorari in the Supreme Court shall not, for the purpose of this subsection, prevent or delay finality of the Court of Appeals opinion for publication.

(d) *Per curiam affirmance.* The Court of Appeals, with the concurrence of all judges participating in the case, may affirm the action of the trial court without rendering a formal opinion when an opinion would have no precedential value and one or more of the following circumstances exist and are dispositive of the appeal:

(1) the Court concurs in the facts as found or as found by necessary implication by the trial court;

(2) there is material evidence to support the verdict of the jury;

(3) no reversible error of law appears.

(e) *Entry of judgment.* The notation of a judgment in the minute book of the Court of Appeals constitutes entry of the judgment. The clerk of the Supreme Court shall enter the judgment following receipt of the opinion and judgment of the court. If a judgment is rendered without an opinion, the clerk shall enter the judgment following instructions from the court. (Amended effective September 1, 1996; amended effective November 1, 1998; amended effective March 7, 2002.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective September 1, 1996, new Rules 35-B(b) and (c) were added. In addition, Rule 35-B(a) was amended to reflect the new Rules, and former Rules 35-B(b) and (c) were renumbered Rules 35-B(d) and (e). 673-678 So.2d XLV (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 35-A replaced Miss.Sup.Ct.R. 35. In addition, the Supreme Court promulgated new Rule 35-B, entitled "Written Opinions and Entry of Judgment in the Court of Appeals." The Comment to Rule 35 was further amended to delete the third sentence. 644-647 So.2d LXXIV-LXXVI (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 35 was amended to delete a reference to a repealed statute. 632-635 So.2d LIII (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1998.]

COMMENT

Comment to Rules 35-A and 35-B.

The portions of Rule 35 dealing with written opinions are based upon former rules of the Supreme Court. The appellate courts' practice is to write opinions when it reverses or remands a trial court or administrative agency, and Rule 35-A(c) and Rule 35-B(d) therefore address those circumstances in which judgment is affirmed and no opinion is written. Rule 45(c) governs furnishing of copies of the courts' opinions and judgments by the clerk.

While it is the policy of the appellate courts to publish all opinions, there are opinions which have been issued prior to, November 1, 1998, the date of the adoption of that policy which have been designated "Not for Publication." Rules 35-A(b) and 35-B(b) restrict the citation of those unpublished opinions. Prior to March 7, 2002, by further amendment to Rule 35-B(c), opinions of the Court of Appeals were not defined as final opinions where they were subject to petitions for writ of certiorari in the Supreme Court until the Supreme Court had denied certiorari or had granted certiorari but later dismissed as improvidently granted. On that date, Rule 35-B(c) was amended to allow publication of Court of Appeals opinions when no motion for rehearing is filed, or where rehearing is denied, even though review on petition for writ of certiorari is sought in the Supreme Court. There remain opinions which were issued prior to each of these amendments which remain designated "Not for Publication," and are not to be cited due to the prohibition of Rule 35-B(b). Although the filing of a petition for writ of certiorari does not delay publication of a Court of Appeals opinion, the filing of such a petition does defer the mandate in the case as provided for in Rule 41(b).

[Amended effective November 1, 1998; amended effective, March 7, 2002.]

RESEARCH REFERENCES

ALR. Precedential effect of unpublished opinions. 105 A.L.R.5th 528.

Rule 36. Costs.

(a) *To whom allowed.* Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Supreme Court or the Court of Appeals. If a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered. If a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court which decided the case.

(b) *Costs for and against the State of Mississippi.* Costs may be awarded for or against the State of Mississippi or any of its agencies, or officers, or political subdivisions unless otherwise provided by law.

(c) *Costs on appeal taxable in court below.* Costs incurred in the preparation and transmission of the record, the costs of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the appeal shall be taxed in the trial court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) *Rehearing and retaxing costs.* If the allowance or disallowance of costs or other matter affecting the judgment has been incorporated in the opinion, a party seeking relief may file a motion for rehearing under Rule 40. All motions to retax costs in the Supreme Court or the Court of Appeals must be filed within 14 days after issuance of the mandate or any addition to the mandate. A party who is not aggrieved by the opinion or mandate but who seeks relief as to any other matter involving costs shall seek relief in the trial court. (Amended June 21, 1996.)

JUDICIAL DECISIONS

Bonds to preserve rights pending appeal.
Costs allowed.
Party to the litigation.
Prevailing party.
Illustrative cases.

Bonds to preserve rights pending appeal.

Chancery court did not err in denying a county board of supervisors a supersedeas bond because nothing in the judgment awarded anything to anyone, it merely validated bonds; the chancery court reviewed the evidence of costs submitted by the board and also took note of the hardship that would cause to the objectors. Lauderdale Cnty. v. Lauderdale Cnty. Bd. of Supervisors, 172 So. 3d 714 (Miss. 2015).

Subsection (c) of this rule does not authorize the taxing as part of the costs in a criminal appeal the premium paid by a convicted defendant for a bail bond to secure his release on bail pending appeal. Jones v. State, 746 So. 2d 297 (Miss. 1999).

Costs allowed.

Chancellor erred by failing to award the appellant the costs which the appellant incurred from a previous appeal of the divorce proceeding in which the appellate court assessed to the appellant's spouse all costs related to the first appeal, and, on remand, appellant introduced into evidence a bill showing the costs which the appellant incurred in pursuing the first appeal. Rodrigue v. Rodrigue, 270 So. 3d 933 (Miss. Ct. App. 2018).

Circuit court erred in denying the taxpayers' motion to tax costs because the applicable statute undisputedly mandated that the county board of supervisors pay "the costs," and the civil and appellate rules provided that costs included, inter alia, the premiums paid for cost of supersedeas bonds. Gulfport Partners V, L.P. v. Harrison Cty. Bd. of Supervisors & Tal Flurry, 231 So. 3d 234 (Miss. Ct. App. 2017), writ of certiorari denied by 2017 Miss. LEXIS 466 (Miss. Dec. 7, 2017), writ of certiorari denied by 2017 Miss. LEXIS 467 (Miss. Dec. 7, 2017), writ of certiorari denied by 2017 Miss. LEXIS 473 (Miss. Dec. 7, 2017), writ of certiorari denied by 2017 Miss. LEXIS 478, 2017 WL 6762039 (Miss. Dec. 7, 2017).

Although the prosecutor's statements were improper and made repeatedly even though the prosecutor was warned by the trial court not to repeat them, a new trial was not necessary; however, in dealing with the prosecutor's conduct in defendant's case pursuant to Miss. R. App. P. 36, the appellate court personally assessed the costs of the appeal against the prosecutor. Brown v. State, 986 So. 2d 308 (Miss. Ct. App. 2006), reversed by, remanded by 986 So. 2d 270, 2008 Miss. LEXIS 340 (Miss. 2008).

The court ordered the appellant to pay the costs of appeal where the court affirmed the chancellor's decision and found no special circumstances to warrant a different ruling. Goodin v. Department of Human Servs., 772 So. 2d 1051 (Miss. 2000).

Trial court erred in taxing one-half of bank's lost investment income as a cost of appeal; trial court was correct, however, in taxing bank for one-half of direct court costs. United Southern Bank v. Bank of Mantee, 680 So. 2d 220 (Miss. 1996).

Party to the litigation.

Because the prosecutor, in his individual capacity, was not a party to the litigation, Miss. R. App. P. 35 provided no authority for taxation of costs against him, personally; an appellate court's power to assess the costs of appeal pursuant to Rule 36 did not extend beyond the parties to the litigation. Brown v. State, 986 So. 2d 270 (Miss. 2008).

Prevailing party.

Mississippi's procedural rules clearly create a presumption favoring the award of costs to the prevailing party; it is therefore incumbent upon unsuccessful party to overcome this presumption by showing some special circumstances. Northern Elec. Co. v. Phillips, 673 So. 2d 1384 (Miss. 1996).

Illustrative cases.

Chancery court should have executed the appellate court's mandate assessing all appellate costs to the wife. Per the mandate for the original appeal, and in accord with the procedures set out in Miss. R. App. P. 36, the husband was entitled to all costs for the original appeal. Griner v. Griner, — So. 3d —, 2019 Miss. App. LEXIS 489 (Miss. Ct. App. Oct. 8, 2019).

Pursuant to Miss. R. App. P. 36(d), a trial court was within its discretion in allowing the a patient's estate to proceed to trial on remand for a new trial without prepayment of appeal costs in a medical malpractice action due to the estate's indigency. Blake v. Estate of Clein, 37 So. 3d 622 (Miss. 2010).

Unsuccessful appellee was relieved of automatic taxation of costs with respect to supersedeas bond premium in excess of $30,000, and matter was remanded to trial court for evidentiary hearing on appellee's inability to pay. Northern Elec. Co. v. Phillips, 673 So. 2d 1384 (Miss. 1996).

Where inequities were indistinguishable as between parties to divorce action, all taxable court costs incident to consolidated appeals were ordered to be aggregated and then divided equally between the parties. Cumberland v. Cumberland, 564 So. 2d 839 (Miss. 1990).

ADVISORY COMMITTEE HISTORICAL NOTE

Effective June 21, 1996, Rule 36(d) and the Comment were amended to redesignate rehearing "petitions" as "motions." 673-678 So.2d XLI (West Miss. Cases 1996).

Effective January 1, 1995, Miss.R.App.P. 36 replaced Miss.Sup.Ct.R. 36, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXVI-LXXVII (West Miss.Cases 1994).

Effective January 1, 1994, the Comment to Miss.Sup.Ct.R. 36 was amended to delete unnecessary statutory references and delete a reference to a repealed statute. 632-635 So.2d LIII-LIV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 36 follows Fed.R.App.P. 39 and, in some respects, prior law. Subdivision (a) gives the both appellate courts discretion in taxation of costs. The Supreme Court has traditionally taxed costs as it thought "proper." See Miss. Code Ann. §§ 11-3-37, 11-3-39 (1991).

Subdivision (b) departs from Fed.R.App.P. 39(b) and reflects the general state rule that the state and its agencies are liable for costs unless a statute provides otherwise. Without such liability, court officials would have no source from which to collect costs. See *State Board of Registration v. Rogers*, 121 So. 2d 720, 721 (Miss. 1960); Miss. Code Ann. §§ 25-7-7, 99-35-105 (Supp. 1986). The state, its subdivisions, and their officers, by statute, are not generally liable, however, for prepayment of costs. Miss. Code Ann. § 11-53-13 (1972); *City of Mound Bayou v. Roy Collins Construction Co.*, 457 So. 2d 337, 340 (Miss. 1984).

Subdivision (c), for the convenience of the parties, makes all costs taxable in the trial court. Judgment may be rendered against an obligor on a supersedeas bond. See Rule 8(d); Miss. Code Ann. § 11-3-27 (1991). A party suing to enforce a judgment for costs is entitled to recover attorneys' fees. Miss. Code Ann. § 11-3-41 (1991). While execution should ordinarily be sought in the trial court, the appellate court retains the power to issue execution for costs.

Subdivision (d) provides that if the allowance or disallowance of costs or other matter affecting the judgment has been incorporated in the opinion, the proper procedure for seeking relief is a motion for rehearing under Rule 40. Normally, however, each court will tax costs in its judgment, and not in its opinions. The court does not send the parties a copy of the judgment until the mandate issues. See Rule 41. For this reason, subdivision (d) provides a 14 day period after issuance of the mandate for the filing of a motion to retax costs. Other parties may not be aggrieved by the mandate and yet may wish to challenge some aspect of the taxation of costs. For example, the mandate usually does not fix the amount of costs to be taxed. A party may admit liability yet wish to challenge the amount taxed. Subdivision (d) provides that relief in such cases is to be sought in the trial court.

The clerk of the Supreme Court continues to have the discretion to deny costs to a trial court clerk if the record is not properly prepared.

[Amended June 21, 1996.]

Rule 37. Interest on judgments.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date judgment was entered in the court or commission below. If a judgment is modified or reversed with direction that a judgment for money be entered in the court below, the mandate shall contain instructions with respect to the allowance of interest.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 37 replaced Miss.Sup.Ct.R. 37. 644-647 So.2d LXXVII-LXXVIII (West Miss.Cases 1994).

Effective July 1, 1994, the second paragraph of the Comment to Miss.Sup.Ct.R. 37 was rewritten to enhance clarity. 632-635 So.2d LIV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

In determining the date interest is payable, this rule basically follows former Mississippi practice and case law. *Porter v. Ainsworth*, 288 So. 2d 709, 710 (Miss. 1974); *United States Fidelity & Guaranty Co. v. Stafford*, 253 So. 2d 388, 393 (Miss. 1971).

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, interest will be payable from the date judgment was entered in the court or commission below. However, if the judgment affirmed provides for payments on a future date, the judgment is deemed, for the purpose of this rule only, to have been entered on that date. *Cf. Brand v. Brand*, 482 So. 2d 236, 237-38 (Miss. 1974) (interest on past due child support payable from the date each past due payment became due).

The final sentence of Rule 37 is a departure from prior law. *See Grice v. General Electric Power Ass'n*, 230 Miss. 437, 456-458, 96 So. 2d 909, 911 (1957); *Stubblefield v. Jesco, Inc.*, 464 So. 2d 47, 60-63 (Miss. 1985). Those cases established the rule that when the Supreme Court reverses a judgment notwithstanding the verdict and renders a judgment for money, the prevailing party can only collect pre-mandate interest on the amount of the verdict if a judgment was entered on that verdict before the trial court set it aside. Federal practice rejects this technical distinction. Following federal practice, this rule grants the Supreme Court or the Court of Appeals authority to use its mandate to control awards of interest when a judgment is modified or reversed with directions that a judgment for money be entered in the court below. In cases where interest is simply overlooked in the mandate, a party who claims entitlement to interest from a date other than the date of entry of judgment in accordance with the mandate should be entitled to seek recall of the mandate for determination of the question.

JUDICIAL DECISIONS

Construction.
Motion for interest denied.
No instructions for interest.

Construction.

The specific language of Rule 37 shifts the burden to the State and its political subdivisions to provide explicit statutory exceptions to the new general rule that the state and its political subdivisions must pay the same costs and interest as individual or corporate appellants who lose their appeals. City of Jackson v. Williamson, 740 So. 2d 818 (Miss. 1999).

Motion for interest denied.

Chancellor did not err in denying the Texas relatives' motion for interest in the chancery court because the issue of his denial of the Georgia relatives' motion was still outstanding on appeal in the appellate court. Ray v. Ray, 963 So. 2d 20 (Miss. Ct. App. 2007).

No instructions for interest.

Because the mandate of the court of appeals did not contain instructions with respect to the allowance of post-judgment interest, the chancery court did not have authority to grant post-judgment interest on its own initiative. Tatum v. Tatum, 105 So. 3d 1141 (Miss. Ct. App. 2012).

Rule 38. Damages for frivolous appeal.

In a civil case if the Supreme Court or Court of Appeals shall determine that an appeal is frivolous, it shall award just damages and single or double costs to the appellee. (Amended effective April 18, 2007.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 38 replaced Miss.Sup.Ct.R. 38, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXVIII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Unlike Fed.R.App.P. 38, this rule applies only to civil appeals, and does not apply to criminal cases. The rule applies when an appeal is frivolous. There is no requirement that the appeal have resulted in delay.

The damages to be awarded may include attorneys' fees and other expenses incurred by an appellee. Interest is treated separately and is governed by Rule 37.

[Amended April 18, 2007.]

JUDICIAL DECISIONS

Attorney fees.
Damages improper.
Damages proper.
Prisoners.
Illustrative cases.

Attorney fees.

Mother was not entitled to attorney's fees on appeal because the father's appeal was not frivolous inasmuch as he was not found to be in willful contempt of his child support arrearage obligations. Carter v. Davis, 235 So. 3d 106 (Miss. Ct. App. 2017), affirmed in part and reversed in part by 241 So. 3d 614, 2018 Miss. LEXIS 38, 2018 WL 549373 (Miss. Jan. 25, 2018).

As the father brought a valid issue on appeal that warranted reversal, total reimbursement of the mother's attorney fees was not merited on appeal, and her fee request was denied. Dailey v. McBeath, 151 So. 3d 1038 (Miss. Ct. App. 2014).

Damages improper.

Supreme court declined to award damages and appeal costs to an opponent because an attorney's appeal was not frivolous; the attorney was not challenging the chancellor's ruling on the motion to quash, which would have had no hope of success, but instead, he was asking the supreme court to review the chancellor's discretionary decision to award sanctions. Garner v. Smith, — So. 3d —, 2019 Miss. LEXIS 241 (Miss. June 27, 2019).

Law firm's appeal was not frivolous because the case involved a novel legal issue, and parts of the record relied upon by the trial court to hold a hearing were not in the record before the supreme court; while the law firm did not appear to have much hope of success, it could not be said on the record that the firm had no hope of success. Ferrell v. Cole (In re Estate of Cole), 256 So. 3d 1156 (Miss. 2018).

Denial of appellee's request for damages and attorney's fees was appropriate because the appeal by the appellant was not frivolous. Harden v. Scarborough, 240 So. 3d 1246 (Miss. Ct. App. 2018).

Decedent's wife was not entitled to attorney's fees and expenses on appeal because in asserting her claim to attorney's fees and expenses, the wife failed to cite any relevant statutory law, caselaw, or rules; because the decedent's daughter asserted a nonfrivolous issue on appeal, and because the wife failed to cite relevant authority to support her claim, her request for attorney's fees and expenses on appeal was denied. Chester v. Labasse (In re Estate of Labasse), 242 So. 3d 167 (Miss. Ct. App. 2017), writ of certiorari denied by 246 So. 3d 70, 2018 Miss. LEXIS 192 (Miss. May 3, 2018).

Wife was not entitled to attorney's fees on appeal because she did not establish an inability to pay and, while the husband clearly desired to make her "pay" for divorcing him, his claims were not frivolous. Lomax v. Lomax, 172 So. 3d 1258 (Miss. Ct. App. 2015).

Sanctions for frivolous filing were not warranted where the client presented an arguable defense to the statute of limitations before the trial court, i.e., fraudulent concealment, and thus, the reviewing court could not say that he had no hope of success. Pickett v. Gallagher, 159 So. 3d 587 (Miss. Ct. App. 2014), writ of certiorari denied by 158 So. 3d 1153, 2015 Miss. LEXIS 138, 2015 WL 1442403 (Miss. Mar. 19, 2015), writ of certiorari denied by 136 S. Ct. 501, 193 L. Ed. 2d 399, 2015 U.S. LEXIS 7249, 84 U.S.L.W. 3275 (U.S. Nov. 16, 2015).

In an employment termination case in which a school district moved for sanctions pursuant to Miss. R. App. P. 38, while the former teacher's aide's arguments were without merit, they were not frivolous. Davis v. Biloxi Pub. Sch. Dist., 43 So. 3d 1135 (Miss. Ct. App. 2009), writ of certiorari dismissed by 49 So. 3d 106, 2010 Miss. LEXIS 487 (Miss. 2010).

Given the mother's 17-year delay in seeking to enforce the provisions of the judgment of divorce, her failure to cite any authority in support of her meager request for attorney fees on appeal, and the appellate court's finding that the father's appeal was not frivolous, pursuant to Miss. R. App. P. 38, the appellate court declined to award the mother any additional attorney fees for her appeal. Durr v. Durr, 912 So. 2d 1033 (Miss. Ct. App. 2005).

Considering the patient's complaint, the appellate court could not say that she had no chance of success; the doctors were granted summary judgment because the patient did not establish the applicable standard of care by expert testimony, not because they did not have a potentially viable claim, as such, the appellate court did not find the appeal to be frivolous, and it would not award damages according to Miss. R. App. P. 38. Hodges v. Lucas, 904 So. 2d 1098 (Miss. Ct. App. 2004).

Where in the defendants' answer to a complaint to evict they initially asserted that they had an agreement to purchase the property in question, protested that they were subject to eviction and, additionally, presented testimony in circuit court regarding a letter from the plaintffs' counsel in an attempt to support their argument, their appeal with regard to the issue was not so frivolous as to support an award of damages and attorney fees. Vice v. Hinton, 811 So. 2d 335 (Miss. Ct. App. 2001).

Appellants were not entitled to damages under M.R.A.P. 38 or § 11-3-23 as they were the parties that initiated the appeal and judgment was being entered against them. Horn v. Horn (Estate of Huddleston), 755 So. 2d 435 (Miss. Ct. App. 1999).

Damages proper.

Property owner's motion for sanctions was granted because a neighbor clearly relied on the idea that he would circumvent the chancery court and raise an issue for the first time on appeal; thus, the neighbor's attempted collateral attack on judgments that did not stem from the underlying litigation had no hope of success. Alexander v. Pitts, 229 So. 3d 1073 (Miss. Ct. App. 2017).

Trustee was granted attorney fees and costs in defending the appeal; uncontradicted expert testimony was that the trustee had acted prudently and without a breach of his duties, and the opposing party did not present any proof at trial. Flowers v. Boolos (In re Estate of Smith), 204 So. 3d 291 (Miss. 2016).

In a case in which a circuit court denied a husband's and wife's motion to vacate a default judgment and their counterclaim for wrongful garnishment against a collection agency, and the collection agency asked for damages against the husband and wife pursuant to Miss. R. App. P. 38

for filing a frivolous appeal, the appeal was frivolous since the husband and wife failed to timely contest their liability or the garnishment of the wife's paycheck. Both the justice court and the circuit court rejected the husband's and wife's arguments in proficient, written opinions. Laffitte v. Southern Fin. Sys., 30 So. 3d 1236 (Miss. Ct. App. 2009), writ of certiorari denied by 29 So. 3d 774, 2010 Miss. LEXIS 153 (Miss. 2010).

In a wrongful death action filed by the parents of two passengers who were killed during a police pursuit of the driver of a stolen vehicle, the parents were ordered to pay the county's attorney fees that were incurred in defending the action on appeal because the appeal was frivolous, as they had no hope of success against the county; the parents were only able to construct a one-sentence argument against the county and the undisputed facts showed that the passengers were involved in criminal activity at the time of the death, namely fleeing from the police in a stolen vehicle. McCoy v. City of Florence, 949 So. 2d 69 (Miss. Ct. App. 2006), writ of certiorari denied by 949 So. 2d 37, 2007 Miss. LEXIS 113 (Miss. 2007).

Where a mother's appeal was frivolous and was filed merely to harass her ex-husband while not furthering the interests of their child, double costs were assessed as an appropriate sanction against her. Foster v. Foster, 788 So. 2d 779 (Miss. Ct. App. 2000).

Prisoners.

Inmate and his legal assistant, who filed petition for writ of replevin seeking possession of items seized by officers from inmate's home, were subject to sanctions where appeal was found to be frivolous and designed to harass the individual officers. Ivy v. Merchant, 666 So. 2d 445 (Miss. 1995).

Illustrative cases.

In an easement dispute, it was not error to deny the dominant estate holder's request for attorney's fees because (1) the servient estate holders acted in good faith, (2) no contractual provision or statute authorized an award, and (3) no monetary damages were shown. McDowell v. Zion Baptist Church, 203 So. 3d 676 (Miss. Ct. App. 2016).

Sanctions against a juvenile's counsel and parents were inappropriate because counsel's arguments did not suggest any disrespect for the youth court and counsel reasonably believed that the juvenile's punishment was unjustifiably harsh in light of the youth court's failure to give a definite term for the juvenile's probation. In the Interest of J.C.M., 135 So. 3d 210 (Miss. Ct. App. 2014).

Father's appeal of a chancellor's denial of a recusal motion in a custody proceeding was frivolous because the chancellor recused himself long before the appeal was filed, the father had notice of the recusal but nonetheless pursued the appeal, and he had been warned against filing meritless claims. Balius v. Gaines, 95 So. 3d 730 (Miss. Ct. App. 2012).

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In a case where a mother sought to hold a father in contempt for failing to pay child support allegedly owed under a temporary order entered in 1988, sanctions were not awarded to the father after it was determined that the mother was precluded from relitigating this issue because her appeal was not frivolous. Forrest v. McCoy, 996 So. 2d 158 (Miss. Ct. App. 2008).

In a case arising from the revocation of a bail bond, a surety was awarded costs, but no additional monetary sanctions for a frivolous appeal. Stringer v. Am. Bankers Ins. Co. of Fla., 969 So. 2d 113 (Miss. Ct. App. 2007), writ of certiorari dismissed by 552 U.S. 1306, 128 S. Ct. 1925, 170 L. Ed. 2d 741, 2008 U.S. LEXIS 3407, 76 U.S.L.W. 3556 (2008).

While the chancellor found that the conduct of the tenants in defacing leased property justified punitive damages, the appellate court stated that it found nothing frivolous in the tenant's appeal; thus, the landlord's request for attorney fees for the appeal of the case was denied. Check Cashers Express, Inc. v. Crowell, 950 So. 2d 1035 (Miss. Ct. App. 2007).

The court awarded further sanctions to the defendant in an action for intentional infliction of emotional distress based on an allegation that the plaintiff's former wife set out on a course of conduct calculated to lead to the total destruction of the parent-child/grandparent-child relationship between the parties' child and her father's side of the family where the trial court found that the plaintiffs had no hope of sucess in the case and there was no justiciable issue on appeal. Little v. Collier, 759 So. 2d 454 (Miss. Ct. App. 2000).

Rule 39. Execution of judgment in criminal cases.

(a) *Execution of judgment after appeal in cases where the appellant is at liberty on appearance bond.* After the submission of a felony case in which the appellant is at liberty on an appearance bond, the appropriate appellate court will determine a date for rendition of its judgment and will so notify appellant. On the day so fixed, appellant shall surrender at 12:30 p.m. to the sheriff of the county in which he was convicted, and the sheriff shall notify the clerk of the Supreme Court no later than 1:00 p.m. whether the appellant has surrendered. On failure of the appellant to surrender to the sheriff as required, the Supreme Court or the Court of Appeals will forfeit the bail bond. Bail shall not be allowed after affirmance in the appellate court, except as provided in Rule 41.

(b) *Procedure following issuance of mandate in criminal cases.* In all criminal cases in which a judgment is to be executed, except those in which a sentence of death has been imposed, the circuit clerk of the county of conviction shall, within 30 days after receipt of the mandate, notify the clerk of the Supreme Court in writing of the status of execution of the judgment. In any case where the judgment has not been executed, the clerk of the Supreme Court shall promptly notify in writing both the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals and the Attorney General.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 39 replaced Miss.Sup.Ct.R. 39, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXVIII-LXXIX (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 39 continues the practice under former rules.

Rule 40. Motion for rehearing.

(a) *Time for filing; content; answer; action by court if granted.* A motion for rehearing may be filed within 14 days after a decision is handed down on the merits of a case by the Supreme Court or the Court of Appeals. The motion shall state with particularity the points of law or fact which, in the opinion of the movant, the court has overlooked or misapprehended and shall contain such argument in support of the motion as movant desires to present. The motion for rehearing should be used to call attention to specific errors of law or fact which the opinion is thought to contain; the motion for rehearing is not intended to afford an opportunity for a mere repetition of the argument already considered by the court. Oral argument in support of the motion will not be permitted.

A motion for rehearing in the Court of Appeals shall be heard by the panel which rendered the judgment in the matter unless the Court of Appeals shall vote to consider the matter *en banc*.

Within seven days after the filing of a motion for rehearing, any other party may, but need not, file and serve a written response in opposition to the motion. Failure to file a response within this time period waives the right to respond but does not confess the arguments made in the motion. If a motion for rehearing is granted, the appropriate court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances in a particular case.

After a motion for rehearing has been denied, no further motion for rehearing shall be filed by any party. After a motion for rehearing has been granted, a party has the option of filing a second motion for rehearing within 14 days after the judgment on rehearing.

(b) *Form of motion; length.* The motion shall be in a form prescribed by Rule 32. When filed conventionally, in cases decided by the Supreme Court an original and ten (10) copies shall be filed with the clerk of the Supreme Court, and in cases decided by the Court of Appeals an original and eleven (11) copies shall be filed. The Supreme Court or the Court of Appeals may require that additional copies be furnished. The motion shall be served as prescribed by Rule 31 for the service and filing of briefs. Except by permission of the appropriate court a motion for rehearing shall not exceed twenty-five (25) pages. If responses are filed, they shall be filed with like numbers of copies.

(c) *Disrespectful language stricken.* Any motion for rehearing containing language showing disrespect or contempt for either appellate court will be stricken, and the appropriate court will take such further action as it may deem proper. (Adopted to govern matters filed on or after January 1, 1995; amended June 21, 1996; amended July 15, 1996; amended effective October 15, 1998; amended effective January 1, 1999; amended effective April 13, 2000; amended April 4, 2002; amended effective October 25, 2018.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective April 13, 2000, Rule 40(a) and the Comment were amended to allow a second motion for rehearing after a first motion for rehearing has been granted. So. 2d (West Miss. Cases 2000).

Effective June 21, 1996, Rule 40 and the Comment were amended to redesignate rehearing "petitions" as "motions." In addition, the Comment was further amended to provide that "Motions for rehearing are limited to cases on the merits and motions which have been decided by panels of the Court or by the court sitting *en banc*. Motions for rehearing are not entertained upon motions decided by a single justice." 673-678 So.2d XLI-XLII and LXXXVIII (West Miss. Cases 1996).

Effective January 1, 1995, Miss. R. App. P. 40 replaced Miss.Sup.Ct.R. 40, embracing proceedings in the Court of Appeals.

Subsection (a) was further amended to provide that any response to a petition for rehearing must be filed within 7, not 14, days of the filing of the petition. 644-647 So.2d LXXIX-LXXX (West Miss. Cases 1994).

COMMENT

Rule 40 is modeled on Fed.R.App.P. 40 and the former rules of the Supreme Court. Following federal practice, the rule provides that the motion is to be written in the form of a brief, and no separate brief is required. The rule also provides an automatic time period in which to respond to a motion for rehearing if desired; however, the appropriate court may call for additional response on specific issues. A motion for rehearing should be distinguished from a motion for clarification or correction of opinion. Such a motion, filed in the manner and form prescribed by Rule 27, does not seek to alter the judgment of the court, and will not stay the mandate. Motions for rehearing are limited to cases on the merits and to motions as expressly allowed under Rule 27(g).

[Amended June 21, 1996; amended effective April 13, 2000.]

JUDICIAL DECISIONS

Applicability.
Motion to amend.
Non-meritorious motions.
Precedential value.
Scope of rehearing.
Suspension of rules.
Timeliness.

Applicability.

Court of Appeals properly analyzed a county's Miss. R. App. P. 40(a) motion as if it had been filed under the Mississippi Rules of Civil Procedure because a motion for rehearing under Rule 40(a) was not a viable motion in the circuit court sitting as an appellate court. Desoto Cty. v. Std. Constr. Co., — So. 3d —, 2019 Miss. LEXIS 323 (Miss. Sept. 12, 2019).

Motion to amend.

Trial court did not err in ruling that a purchaser's garnishment action against a seller was time-barred because it was filed months after the statute had run; the purchaser's motion to amend the mandate in the action the seller filed against him did not toll the statute. Johnson v. Parker Tractor & Implement Co., 132 So. 3d 1032 (Miss. 2014).

Non-meritorious motions.

Two out of three of appellant's propositions were mere repetitions of his original argument, and where both issues had been thoroughly considered and determined to be without merit, they did not need to be readdressed by the court. Brandau v. State, 662 So. 2d 1051 (Miss. 1995).

Precedential value.

Because a motion for rehearing had been filed in a case, and the decision was subject to modification on rehearing, the case had no precedential value. Singing River Health Sys. v. Vermilyea, 242 So. 3d 74 (Miss. 2018).

Scope of rehearing.

After defendant's death penalty sentence was vacated and remanded for resentencing, a trial court properly determined that it did not have discretion to consider defendant's ex post facto claim because the execution of orders issued by the supreme court was a purely ministerial act, and lower courts had no authority to alter or amend them; instead, defendant's claim should have been raised in a response to a motion to the supreme court under Miss. R. App. P. 27(a), or in the alternative in a motion for reconsideration of a motion under Miss. R. App. P. 27(h) or in a motion for rehearing under Miss. R. App. P. 40. Foster v. State, 961 So. 2d 670 (Miss. 2007).

Wife could not have raised the issue of restitution before the appellate court in a motion for rehearing because there was absolutely no evidence in that record concerning any actions by the parties in response to that part of the judgment which ordered the wife to pay the mortgage. Because the wife's payment to the bank in accordance with the chancery court's order was not in the record, the issue of restitution was not a proper basis for a motion for rehearing. Therefore, res judicata does not apply to the issue of restitution. Dunn v. Dunn, 853 So. 2d 1150 (Miss. 2003).

The purpose of a motion for rehearing is to provide the court an opportunity to correct any errors on issues already presented and decided; however, a rehearing does not encompass a new set of arguments and, therefore, it is improper for a party to raise a new legal or factual argument in a motion for rehearing. White v. State, 761 So. 2d 221 (Miss. Ct. App. 2000).

Suspension of rules.

Though appellant failed to file its appeal with 14 days of the appellate court's decision as required by Miss. R. App. P. 40(a), because the matter was of significant importance in setting precedent, the appellate court exercised its authority under Miss. R. App. P. 2(c) to recall the mandate and issue a modified opinion on rehearing. Sweet Valley Missionary Baptist Church v. Alfa Ins. Corp., 124 So. 3d 683 (Miss. Ct. App. 2013), affirmed by, remanded by 124 So. 3d 643, 2013 Miss. LEXIS 574 (Miss. Oct. 31, 2013).

Timeliness.

Because a county board of supervisors filed a notice of appeal 96 days after a circuit court entered an order and opinion, reversing the board's decision, the appellate court lacked jurisdiction as the appeal was untimely filed in that the board's motion for rehearing in the circuit court, which was filed 11 days after the circuit court entered its judgment, did not toll the time for filing the notice of appeal. DeSoto Cty. v. Std. Constr. Co., — So. 3d —, 2019 Miss. App. LEXIS 31 (Miss. Ct. App. Jan. 22, 2019).

Supreme Court of Mississippi would not consider defendant's Miss. R. App. P. 17 petition for a writ of certiorari because defendant's motion for rehearing, filed more than two weeks past the deadline, was untimely under Miss. R. App. P. 40, and defendant did not argue that there was good cause to suspend the rule under Miss. R. App. P. 2(c). McCalpin v. State, 166 So. 3d 24 (Miss. 2013).

Rule 41. Issuance of mandates; stay of mandate.

(a) *Date of issuance: Supreme Court.* The mandate of the Supreme Court shall issue 21 days after the entry of judgment unless the time is shortened or enlarged by order. The mandate shall consist of both a certified copy of the judgment of the Supreme Court with any direction as to costs, and a copy of the Court's written opinion, if any. The timely filing of a motion for rehearing will stay the mandate until disposition of the motion, unless otherwise ordered by the Court. If the motion is denied, the mandate will issue seven (7) days after entry of the order denying the motion unless the time is shortened or enlarged by order.

(b) *Date of issuance: Court of Appeals.* Unless otherwise ordered, the mandate of the Court of Appeals shall issue 21 days after the latest of: the entry of judgment; the disposition of a timely motion for rehearing; or the denial or dismissal of a petition for *certiorari* review in the Supreme Court. If the Mississippi Supreme Court grants *certiorari* review, the mandate shall issue in accordance with Rule 41(a).

(c) *Stay of mandate pending application for certiorari.* A stay of the mandate pending application to the United States Supreme Court for a writ of certiorari may be granted upon motion, reasonable notice of which shall be given to all parties. The stay shall not exceed 90 days unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of Supreme Court a notice from the clerk of the United States Supreme Court that the party who has obtained the stay has filed a petition for the writ in that Court, the stay shall continue until final disposition by that Court. Upon the filing of a copy of an order of the United States Supreme Court denying the petition for writ of certiorari, the mandate shall issue immediately. A bond or other security may be required as a condition to the grant or continuance of a stay of the mandate.

(d) *Stay of mandate and release in criminal cases.* Stay of the mandate in criminal cases shall be governed by Rule 41(c), but, in addition, the petitioner must set forth good cause for the stay and clearly demonstrate that a substantial federal question previously presented on appeal is to be presented to the United States Supreme Court. In order to obtain release, the petitioner must also post a fully executed and approved appearance bond in a penal sum equal to double the amount of the bond upon which the petitioner was released from custody after conviction.

(e) *Motion to amend or correct mandate; time for filing.* Any motion to amend or correct the mandate may be filed within fourteen (14) days after the court has issued the mandate or any addition to the mandate. (Amended February 10, 1995; amended June 21, 1996; amended effective September 30, 2004 to allow the stay of a mandate under Rule 41(c) for 90 days.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective September 18, 1997, Rule 41(d) was amended to effect a technical change. 669-701 So. 2d XXX (West Miss. Cases 1997).

Effective June 21, 1996, Rule 41 was amended to redesignate rehearing "petitions" as "motions." 673-678 So.2d XLIII (West Miss. Cases 1996).

Effective February 10, 1995, Rule 41(b) was entirely rewritten. 648 So.2d XXXII-XXXIII (West Miss.Cases 1995).

Effective January 1, 1995, Miss.R.App.P. 41 replaced Miss.Sup.Ct.R. 41, adding a new subsection (b) to govern the issuance of mandates by the Court of Appeals. 644-647 So.2d LXXX-LXXXI (West Miss.Cases 1994).

[Adopted August 21, 1996; amended effective July 1, 1998; amended March 31, 1999.]

COMMENT

Rule 41 is based upon Fed.R.App.P. 41. Under Rule 41(a) and (b) the appropriate appellate court issues a formal mandate which includes a certified copy of the judgment with any direction as to costs and a copy of the written opinion, if any. The mandate must correctly and adequately reflect the decision and judgment of the Court. *Deposit Guaranty National Bank v. E.Q. Smith Plumbing & Heating, Inc.*, 396 So. 2d 6 (Miss. 1981).

Subsection (c) is based upon Fed.R.App.P. 41(b).

Under subsection (d), a motion for a stay of the issuance of the mandate in a criminal case will not be granted unless the petition sets forth good cause for the stay and clearly demonstrates that a substantial question previously presented on appeal is to be presented to the United States Supreme Court. A motion for a stay of the issuance of the mandate in such a criminal appeal shall not be granted simply upon request. A party is no longer required to file a copy of the party's *certiorari* petition prior to obtaining release.

However, the motion for stay must demonstrate that a substantial federal question exists, and the party must obtain a notice that the *certiorari* petition has been filed in order to obtain an extension of the stay and release beyond 90 days.

JUDICIAL DECISIONS

Suspension of rules.

Though appellant failed to file its appeal with 14 days of the appellate court's decision as required by Miss. R. App. P. 40(a), because the matter was of significant importance in setting precedent, the appellate court exercised its authority under Miss. R. App. P. 2(c) to recall the mandate and issue a modified opinion on rehearing. Sweet Valley Missionary Baptist Church v. Alfa Ins. Corp., 124 So. 3d 683 (Miss. Ct. App. 2013), affirmed by, remanded by 124 So. 3d 643, 2013 Miss. LEXIS 574 (Miss. Oct. 31, 2013).

Rule 42. Voluntary dismissal.

(a) *Dismissal in the lower court.* If an appeal has been perfected in accordance with these rules but has not been docketed with the clerk of the Supreme Court, the appeal may be dismissed by the lower court upon the filing in either the trial court or the appellate court of a stipulation for dismissal signed by all parties or their attorneys.

(b) *Dismissal in the appellate court.* After the appeal has been docketed with the clerk of the Supreme Court, an appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Supreme Court or, if the case has been assigned to the Court of Appeals, by the Court of Appeals. If the parties to an appeal or other proceeding or their attorneys agree that the proceeding be dismissed, they may file a joint motion to dismiss specifying the terms as to the payment of costs and that all fees have been paid.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 42 replaced Miss.Sup.Ct.R. 42, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXXI-LXXXII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Subdivision (a) of Rule 42 is modeled on Fed.R.App.P. 42(a). It departs from previous practice and procedure in that the lower court may dismiss an appeal which has been perfected in the lower court, but not yet docketed with the Supreme Court, where all parties or their attorneys sign a stipulation of dismissal. However, because an appeal is docketed when the notice of appeal is filed with the Supreme Court clerk, *see* Rule 13(a), the circumstances in which such a dismissal can take place should be rare.

Section (b) is a restatement of existing case law in Mississippi regarding voluntary dismissal of an appeal. It reiterates the long recognized rule that while a voluntary dismissal of an appeal will usually be granted, the appellate court may have special reasons to refuse to grant the motion for a voluntary dismissal filed by the appellant, and further recognizes that an appellant's right to dismiss an appeal is not absolute, but subject to the discretion of the court. *See Wolf v. Miss. Valley Trust & Co.*, 130 Miss. 144, 93 So. 581

(1922). Once an appeal is voluntarily dismissed, no further appeal may be brought. Miss. Code Ann. § 11-3-15 (1991).

JUDICIAL DECISIONS

Res judicata effect.

Where a father entered into a stipulation to dismiss a driver from a negligence case with prejudice, his minor son was unable to assert the same cause of action against the driver when he reached the age of majority, pursuant to the doctrine of res judicata. Taylor v. Taylor, 835 So. 2d 60 (Miss. 2003).

Rule 43. Substitution of parties.

(a) *Death of a party.* If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the Supreme Court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appropriate appellate court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the lower court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed, substitution shall be effected in the appellate court in accordance with this Rule 43(a). If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by that party's personal representative, or, if there is no personal representative, by that party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed, substitution shall be effected in the appellate court in accordance with this Rule 43(a).

(b) *Substitution for other causes.* If substitution for a party in either appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in Rule 43(a).

(c) *Public officers: death or separation from office.*

(1) *Substitution.* When a public officer is a party in an official capacity to an appeal or other proceeding in either appellate court and, during its pendency, the officer dies, resigns, or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but failure to enter such an order shall not affect the substitution.

(2) *Use of title.* When a public officer is a party to an appeal or other proceeding in an official capacity, that public officer may be described as a party by the public officer's official title rather than by name, but the court may require the public officer's name be added.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 43 replaced Miss.Sup.Ct.R. 43, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXXII-LXXXIII (West Miss.Cases 1994).

Effective July 1, 1994, the Comment to Miss.Sup.Ct.R. 43 was amended to delete references to repealed statutes and material concerning the transition from statutory procedures to Rule practice, and to effect attendant technical changes. 632-635 So.2d LIV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 43 is patterned after Fed.R.App.P. 43. It applies to civil cases only, and not to criminal cases. *Cf. Berryhill v. State*, 492 So. 2d 288 (Miss. 1986) (dismissing criminal appeal on death of defendant).

When the party against whom an appeal is taken dies after judgment in the lower court but before the appeal has been perfected, the appellant may proceed as if death had not occurred and substitute under Rule 43 after the appeal has been perfected.

Likewise, the personal representative of a deceased party who dies before perfecting the appeal may file the notice of appeal. If there is no representative, the attorney of record may perfect the appeal and substitute a representative after perfection. However, the perfection still must be timely in accordance with Rule 4 or 5.

JUDICIAL DECISIONS

Abatement ab initio.
Death of a party.

Abatement ab initio.

Deceased defendant's appeal of a criminal conviction was dismissed because the abatement ab initio doctrine was rejected, as (1) the defendant's victim had the right to be treated with dignity, fairness, and respect, (2) the defendant's rights had been observed, and (3) the defendant's estate or personal representative did not seek to be substituted. Payton v. State, — So. 3d —, 2019 Miss. LEXIS 123 (Miss. Mar. 21, 2019).

Death of a party.

In a medical negligence action, substitution of the parties was granted under Miss. R. App. P. 43(a) where the patient died during the pendency of the action in the trial court, the patient's husband incorporated a substitution motion in an amended complaint, but the trial court never ruled on the motion, and then the husband died during the pendency of the appeal. Meadows v. Blake, 36 So. 3d 1225 (Miss. 2010).

Rule 44. Questions concerning validity of statutes and orders.

(a) *Service.* If the validity of any statute, executive order or regulation, municipal ordinance, franchise or written directive of any governmental officer, agent, or body is raised in the Supreme Court or the Court of Appeals, and the state, municipal corporation, or governmental body which enacted or promulgated it is not a party to the proceeding, the party raising such question shall serve a copy of its brief, which shall clearly set out the question raised, on the Attorney General, the city attorney, or other chief legal officer of the governmental body involved.

(b) *Right to respond.* The state, municipal corporation, or governmental body shall, within the time allowed for the filing of a response to the brief, be entitled to file a response and may subsequently be heard orally in the discretion of the court.

(c) *Necessity.* Except by special order of the court to which the case is assigned, in the absence of such notice neither the Supreme Court nor the Court of Appeals will decide the question until the notice and right to respond contemplated by this rule has been given to the appropriate governmental body.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 44 replaced Miss.Sup.Ct.R. 44, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXXIII-LXXXIV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 44 is based on Fed.R.App.P. 44 and Ala.R.App.P. 44. Failure to give notice is an omission which may be cured. Subsection (c) permits action to proceed in the case without notice by special order if the court determines that urgent action is necessary or that the challenged statute, order, or directive is so patently invalid that no response need be required from the affected body. Also, the governmental body may waive its right to respond.

The appearance of the governmental body will ordinarily be in accord with the provisions of Rule 29 concerning an *amicus curiae.* Pursuant to Rule 25, the certificate of service of the party raising the question of validity should reflect compliance with this rule.

The term "validity" is intended to be broad enough to encompass the method of enactment as well as the constitutionality and authority for any statute, ordinance or regulation. It does not include mere questions of construction and interpretation. This rule applies not only to appeals, but also to any extraordinary proceeding before the court. A provision for notice to the Attorney General in trial proceedings is found in M.R.C.P. 24(d).

JUDICIAL DECISIONS

Preservation for review.
Procedure.

Preservation for review.

Candidate's argument that the trial court erred in declining to consider that part of the motion for summary judgment challenging the constitutionality of statutes was procedurally barred because the attorney general was not provided a copy of the judge's brief. James v. Westbrooks, — So. 3d —, 2019 Miss. LEXIS 177 (Miss. Apr. 25, 2019).

Homeowners' challenge to the constitutionality of a statute was barred because the homeowners did not generally raise the issue before the trial court, and they did not notify the Attorney General or serve a copy of their appellate brief on the Attorney General or appropriate governmental body. Brown v. Waldron, 186 So. 3d 955 (Miss. Ct. App. 2016).

Unemployment compensation claimant's constitutional argument on appeal was procedurally barred because his argument was unsupported by citation to authority and he did not provide notice to the attorney general under Miss. R. Civ. P. 24(d) and Miss. R. App. P. 44(a) that the constitutionality of a statute was being challenged; therefore, he was procedurally barred from advancing his constitutional argument on appeal. Grehan v. Miss. Empl. Sec. Comm'n, 918 So. 2d 774 (Miss. Ct. App. 2005).

Appellant's failure to challenge the constitutionality of Miss. Code Ann. § 11-46-13(1) with the trial court or to give notice to the attorney general precluded the Supreme Court from considering the issue on appeal. Donaldson v. Covington County, 846 So. 2d 219 (Miss. 2003).

Procedure.

Father and his children complied with the requirements of the rule because they provided the Attorney General with a copy of their appellate brief. Perkins v. Nelson (In re Estate of Nelson), 266 So. 3d 1008 (Miss. Ct. App. 2018).

Supposed "notice" to a special assistant attorney general is notsufficient under Miss. R. Civ. P. 24(d) or Miss. R. App. P. 44; therefore, ahospital was procedurally barred from bringing constitutional challenges toMiss. Code Ann. § 41-7-191(16) under Miss. Const. art. 4, § 87, Miss.Const. art. 3, § 14, and the Fourteenth Amendment where there was no notice to the Mississippi Attorney General. Oktibbeha County Hosp. v. Miss. State Dep't of Health, 956 So. 2d 207 (Miss. 2007).

Because the father failed to raise his constitutionality challenge to Miss. Code Ann. § 91-1-15(3)(c) by providing notice to the attorney general in the trial court, the appellate court declined to address the issue on appeal. Tew v. Estate of Doe, 859 So. 2d 347 (Miss. 2003).

Estate administrator failed to comply with the rule and the constitutionality issue of the statute was barred, because it was not raised in the trial court and because the attorney general's office was not properly notified. Corey v. Skelton, 834 So. 2d 681 (Miss. 2003).

Rule 45. Duties of the clerk.

(a) *General provisions.* The clerk of the Supreme Court shall take the oath and give the bond required by law, and shall serve as clerk for the Supreme Court and the Court of Appeals. The Supreme Court and the Court of Appeals shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process, and of making motions and orders. The office of the clerk shall be open during business hours on all days except Saturdays, Sundays, and legal holidays specified in Rule 26.

(b) *The docket; other records required.* The clerk shall keep a book or record known as the docket and shall enter each case in it. Cases shall be assigned consecutive file numbers. All papers filed with the clerk and all process, orders, and judgments shall be entered chronologically in the docket assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.

The clerk shall prepare, under the direction of the court, a list of cases awaiting argument or submission.

The clerk shall keep such other books and records as may be required by the Supreme Court.

(c) *Notice of orders or judgment.* Immediately upon the entry of an order or judgment, the clerk shall serve a notice of entry by mail upon each party to the proceeding, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

(d) *Custody of records and papers.* The clerk shall have custody of the records and papers of the Supreme Court and of the Court of Appeals. The clerk shall not permit any original record or paper to be taken from the clerk's custody during the pendency of the appeal except by or on behalf of a party. After the completion of the time for briefing prescribed by Rule 31 and before decision, no party will be permitted to withdraw the record except upon motion accompanied by an affidavit stating that the trial court record retained under Rule 11(e) is not available. After a mandate has been issued, any member of the bar in good standing may withdraw from the clerk's office any record after paying in advance a fee of $15.00. Incarcerated pro se litigants may withdraw from the clerk's office the appellate record in their cause after paying in advance a fee of $15.00. A reasonable mailing and handling fee of $10.00 will be assessed in the event the record requires mailing to the requesting party. Records containing more than 10 volumes will be assessed actual mailing cost. No record shall be held out of the clerk's office more than 90 days. If the record is held out past the 90 day period, a record delinquency fee will be assessed in the amount of $50.00. The clerk shall maintain a separate accounting dealing solely with records and documents which have been withdrawn from the clerk's files in accordance with this rule. The clerk shall advise the Supreme Court in writing on the first Monday of each month of any records, briefs, or papers which have not been returned in compliance with this rule. The Supreme Court may also take such other action with respect to records as the circumstances warrant, and may require any party failing to return a record to pay the full cost of reproducing the record from other sources. A copy of this rule shall be attached to any records or documents removed from the clerk's office indicating the estimated cost for reproduction. This rule does not apply to those cases which the Supreme Court has delivered to the Mississippi Department of Archives and History pursuant to Section 9-3-25 of the Mississippi Code of 1972, for which cases the Mississippi Department of Archives and History is solely responsible. (Adopted to govern matters on or after January 1, 1995; amended January 3, 2002; amended effective July 1, 2010.)

Cross References — Completed electronic transmission of a document consistent with Appellate E-Filing Administrative Procedures constitutes entry of that document onto the docket maintained by the Clerk pursuant to M.R.A.P. 45, see Appellate E-Filing Administrative Procedures § 3.A.4.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss. R. App. P. 45 replaced Miss.Sup.Ct.R. 45, providing that the clerk of the Supreme Court shall serve as the clerk for the Court of Appeals. Subsection (b) was further amended to effect a technical change concerning the docket. 644-647 So.2d LXXXIV-LXXXV (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 45 follows Fed.R.App.P. 45 and prior state practice.

The Rule provides that the clerk of the Supreme Court also serves as the clerk of the Court of Appeals. This is consistent with the general policy under which the administrative structure and employees of the Supreme Court support and serve the Court of Appeals, and consistent with the Supreme Court's general authority to set administrative policies and procedures for the Court of Appeals. Of course, references throughout these rules to the clerk of the Supreme Court include any duly appointed deputy clerk. *See* Miss Code Ann. § 9-4-7(2) (Supp. 1994).

Rule 46. Admission, withdrawal, and discipline of attorneys.

(a) *Admission to practice.* Attorneys who have not been admitted to practice in the Supreme Court or the Court of Appeals shall not be permitted to argue orally, or file briefs or any paper in any cause in either Court. Upon presentation to the clerk of a certified copy of the order of a trial court admitting an attorney to practice in this state, together with a certificate of good standing from the Executive Director of the Mississippi Bar, the clerk may admit such attorneys to practice before the Supreme Court and the Court of Appeals and administer the oath to each such attorney.

(b) *Admission of foreign attorneys pro hac vice.*

(1) *Terminology.*

i. "Administrative agency" shall include any agency, department, board or commission of the State of Mississippi, or any county, city, public school district or other political subdivision of the State of Mississippi.

ii. "Appearance" shall include the appending or allowing the appending of the foreign attorney's name on any pleading or other paper filed or served, or appearing personally before a court or administrative agency or participating in a deposition or other proceeding in which testimony is given. Presentation of uncontested matters to administrative agencies does not constitute appearances as the term is used in this Rule 46(b). Appearance of a foreign attorney shall commence with the first appearance and continue until final determination or until an order permitting the foreign attorney to withdraw has been issued.

iii. "General practice of law" shall be deemed to include, when applied to a foreign attorney, appearances by the foreign attorney in more than five (5) separate unrelated causes or other matters before the courts or administrative agencies of this state within the twelve (12) months immediately preceding the appearance in question.

iv. "Foreign attorney" shall mean an attorney licensed to practice law and in good standing in another state, the District of Columbia, or other American jurisdiction, but not licensed and in good standing to practice law in Mississippi.

v. "Local attorney" shall mean an attorney who is licensed and in good standing to practice law in Mississippi.

(2) *Appearance of a foreign attorney pro hac vice permitted.* A foreign attorney shall not appear in any cause except as allowed pro hac vice under this Rule 46(b). A foreign attorney who is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state, may, subject to the provisions of this Rule 46(b), appear as counsel pro hac vice in a particular cause before any court or administrative agency in this state upon compliance with the conditions stated in this subdivision.

(3) *Foreign attorney appearing pro hac vice subject to local jurisdiction.* A foreign attorney appearing as counsel pro hac vice before any court or

administrative agency of this state shall be subject to the jurisdiction of the courts of this state in any matter arising out of the attorney's conduct in such proceedings. The foreign attorney shall study and comply with the standards of professional conduct required of members of the Mississippi Bar and shall be subject to the disciplinary jurisdiction of the courts of this state, of the disciplinary tribunals of the Mississippi Bar, and of the Mississippi Board of Bar Admissions with respect to any acts occurring during the course of such appearance. A foreign attorney who has been found in an appropriate disciplinary proceeding to have advertised services in violation of Rule 7.2 of the Mississippi Rules of Professional Conduct, or who is employed by or is a member of a firm which has been so found, shall not be granted leave to appear pro hac vice before the courts or administrative agencies of this state.

(4) *Association of local attorney.* No foreign attorney may appear pro hac vice before any court or administrative agency of this state unless the foreign attorney has associated in that cause a local attorney. The name of the associated local attorney shall appear on all notices, orders, pleadings, and other papers filed in the cause. The local attorney shall personally appear and participate in all trials, and, unless specifically excused from such appearance by the court or administrative agency, in all pretrial conferences, hearings, other proceedings conducted in open court and all depositions or other proceedings in which testimony is given in this state. By associating with a foreign attorney in a particular cause, the local counsel accepts joint and several responsibility with such foreign attorney to the client, to opposing parties and counsel, and to the court or administrative agency in all matters arising from that particular cause.

(5) *Verified application, clerk's statement and filing fees.* A foreign attorney desiring to appear pro hac vice before any court or administrative agency of this state shall file with the subject court or administrative agency and with the Clerk of the Supreme Court (1) a verified application and (2) a statement obtained from the Clerk of the Supreme Court indicating all causes or other matters in which the foreign attorney previously requested leave to appear as counsel pro hac vice showing the date and disposition of each request. Such application and statement shall be accompanied by a certificate of service on all parties in accordance with the Mississippi Rules of Civil Procedure.
The verified application shall contain the following information:

i. the name of the court or administrative agency before which the foreign attorney desires to appear as counsel pro hac vice;

ii. the style of the cause in which the foreign attorney desires to appear;

iii. the full name, residence address, office address, voice and facsimile telephone numbers, and e-mail address, if any, of the foreign attorney;

iv. each jurisdiction in which the foreign attorney has been admitted and the date of admission;

v. a statement that the foreign attorney: (a) does not maintain an office within this state, or that the foreign attorney is a member of a firm which maintains an office or offices within this state which are staffed, full time, by an attorney or attorneys who are licensed to practice in this state and (b) has not engaged in the general practice of law in this state without being properly admitted and licensed to practice law in this state;

vi. a statement that the foreign attorney is currently licensed in good standing to practice law in each jurisdiction in which the foreign attorney has been admitted or, if the foreign attorney is not currently licensed in good standing to practice law in any jurisdiction in which the foreign attorney has previously been admitted, a full explanation of circumstances;

vii. a statement that the foreign attorney is not currently suspended or disbarred by any jurisdiction in which the foreign attorney has been admitted;

viii. a statement of whether or not the foreign attorney has been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five (5) years, and, if so, a full explanation of the circumstances;

ix. a statement that the foreign attorney is of good moral character and familiar with the ethics, principles, practices, customs, and usages of the legal profession in this state;

x. the style and number of each cause, including the name of the court or administrative agency, in which the foreign attorney has appeared as counsel pro hac vice within this state within the immediately preceding 12 months, is presently appearing as counsel pro hac vice, or has requested admission to appear as counsel pro hac vice;

xi. a statement that, unless permitted to withdraw by order of the court or administrative agency, the foreign attorney will continue to represent the client in the cause until the final determination of the cause, and that, with reference to all matters incident to such cause, the foreign attorney consents to the jurisdiction of the courts of the State of Mississippi, of the disciplinary tribunals of the Mississippi Bar, and of the Mississippi Board of Bar Admissions in all respects as if the foreign attorney were a regularly admitted and licensed member of the Mississippi Bar;

xii. the name and office address of the member or members in good standing of the Mississippi Bar whom the foreign attorney has associated in the particular cause; and

xiii. the verified application of the foreign attorney for appearance pro hac vice shall also be signed by the associated local attorney, certifying the local attorney's agreement to be associated by the foreign attorney in the particular cause.

Simultaneously with the filing of the application, the foreign attorney shall pay to The Mississippi Bar the sum of $200 which will be used by the Bar to provide legal services to the indigent, and shall certify to the court or agency and to the Clerk of the Supreme Court that such payment has been made, and shall pay to the Clerk of the Supreme Court the customary miscellaneous docket fee as provided in Miss. Code Ann. § 25-7-3. In cases involving indigent clients, the court or agency may waive the filing fees for good cause shown.

(6) *Proceedings on application of foreign attorney to appear as counsel pro hac vice.* No hearing on an application to appear pro hac vice is required except upon motion of a party or where the court considers such a hearing to be desirable. Upon motion of a party opposing such appearance, or on the court's

motion, a hearing may, in the discretion of the judge, be held to determine whether the foreign attorney has complied with Rule 46(b).

No hearing on an application to appear pro hac vice is required except upon motion of a party or where the court considers such a hearing to be desirable. Upon motion of a party opposing such appearance, or on the court's motion, a hearing may, in the discretion of the judge, be held to determine whether the foreign attorney has complied with Rule 46(b).

(7) *Order authorizing appearance.* A foreign attorney shall not appear as counsel pro hac vice before any court or administrative agency until the foreign attorney certifies to the court or administrative agency that the foreign attorney has provided a copy of the order authorizing such appearance to the Clerk of the Supreme Court.

(8) *Prohibition of general practice of law in Mississippi under pro hac vice privilege.*

i. General Prohibition. No foreign attorney shall appear as counsel pro hac vice before any court or administrative agency of this state if the foreign attorney: (a) maintains an office within this state, unless the foreign attorney is a member of a firm which maintains an office or offices within this state which are staffed, full time, by an attorney or attorneys who are licensed to practice in this state or (b) has engaged in the general practice of law in this state without being properly admitted and licensed to practice law in this state.

ii. General Practice. Appearances by a foreign attorney before the courts or administrative agencies of this state in more than five (5) separate unrelated causes or other matters within the twelve (12) months immediately preceding the appearance in question shall be deemed the general practice of law in this state, which may be performed only by an attorney properly admitted and in good standing as a member of the Mississippi Bar. Appearance of a foreign attorney shall commence with the first appearance and continue until final determination on the merits or until the foreign attorney has obtained an order permitting him to withdraw.

iii. Exception for Law Teachers. The limitations in this subdivision (b)(8) shall not apply to a foreign attorney employed full-time as a law school teacher by a law school located in this state, provided that such law teacher must be in good standing in the jurisdictions in which the law teacher is admitted and must associate a local attorney in order to appear.

(9) *Suspension or disbarment terminates permission to appear pro hac vice.*

i. Foreign Attorney. Permission for a foreign attorney to appear pro hac vice under the provisions of this rule shall terminate upon such attorney's suspension or disbarment in any jurisdiction in which the foreign attorney has been admitted. The foreign attorney shall have the duty to promptly report to the court or administrative agency of this state before which the foreign attorney is appearing any disciplinary action which has been taken in any other jurisdiction.

ii. Local Attorney. In the event that the local attorney associated by a foreign attorney in a particular case is suspended, disbarred or incapacitated by virtue of health or otherwise from the practice of law in the State of Mississippi, the foreign attorney shall, before proceeding further in the pending cause, associate a new local attorney who is in good standing to practice law in this state and shall file an amendment to the verified application required by subdivision (b)(5).

(10) *Exclusions.*

i. Appearance Pro Se. Nothing in this rule shall be construed to prohibit any attorney from appearing before any court or administrative agency of this state on the attorney's own behalf in any civil or criminal matter.

ii. United States Attorneys. Attorneys representing the United States government in matters before the courts or administrative agencies of this state shall be permitted to appear on behalf of the United States government and to represent its interest in any matter in which the United States government is interested without the association of local counsel.

(11) *Enforcement.*

i. By Clerks and Filing Officers. No court clerk or filing officer of any administrative agency of this state shall accept or file any pleadings or other papers from a foreign attorney who has not complied with the requirements of this rule. Any pleadings or other papers filed in violation of this rule shall be stricken from the record upon the motion of any party or by the court or administrative agency sua sponte. A request for the issuance of a subpoena pursuant to Rule 45(a)(3) of the Rules of Civil Procedure is not subject to this Rule.

ii. By Courts and Administrative Agencies. The courts and administrative agencies of this state shall have the duty and authority to enforce the provisions of this rule by denying violators the right to appear. If a foreign attorney engages in professional misconduct during the course of a special appearance, the judge or chief officer of the administrative agency before which the foreign attorney is appearing may revoke permission to appear pro hac vice and may cite the foreign attorney for contempt. In addition, the judge or administrative officer shall refer the matter to the disciplinary counsel of the Mississippi Bar for appropriate action by the disciplinary tribunal.

iii. Violation. Violation of this rule is deemed to be the unlawful practice of law. The Mississippi Bar, or its designated representatives, shall have the right to take appropriate action to enforce the provisions of this rule under the provisions of Miss. Code Ann. § 73-51-1 (1989).

iv. Cumulative Enforcement. Provisions of this rule shall be cumulative with all other statutes and rules providing remedies against the unauthorized practice of law within the State of Mississippi.

(c) *Withdrawal.* An attorney who appears before the Supreme Court or the Court of Appeals in an appeal or other proceeding may withdraw from the representation only with the approval of the appropriate court. If an attorney desires to withdraw, the attorney shall file a motion giving the attorney's reasons for desiring to withdraw and requesting approval of the appropriate court. Such motion shall be served upon the attorney's client and upon all parties. The motion shall be accompanied by an appearance form of substitute counsel or a signed statement by the client indicating that the client agrees to proceed *pro se,* or shall explain why neither can be obtained. If the motion is accompanied by a signed statement by a client in a criminal appeal, then pursuant to Rule 6(c), the appellate court shall request that the trial court determine whether the appellant knowingly and intelligently waives counsel on appeal.

(d) *Disciplinary power of the court over attorneys.* Every petition, motion, brief, or other paper filed by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. The appellate court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested by the attorney, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar, or for failure to comply with these rules or any order of the Supreme Court or the Court of Appeals, or for filing any frivolous petition, motion, brief, or other paper.

(e) *Military legal assistance program.*

(1) A lawyer admitted to the practice of law in a state or territory of the United States, other than Mississippi, who is serving in or employed by the armed services as an attorney and is otherwise authorized to provide legal assistance pursuant to 10 U.S. Code § 1044, may apply to the Supreme Court for a certificate as a Registered Military Legal Assistance Attorney in Mississippi to represent clients eligible for legal assistance in the courts and tribunals of this state while the lawyer is employed, stationed, or assigned within Mississippi.

(2) Each applicant for a Registered Military Legal Assistance Attorney Certificate shall:

(i) file with the clerk of the Supreme Court an application, under oath, upon a form furnished by the clerk;

(ii) furnish a certificate, signed by the presiding judge of the court of last resort, or other appropriate official of the jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction;

(iii) file an affidavit, upon a form furnished by the clerk of the Supreme Court, from the commanding officer, staff judge advocate or chief legal officer of the military base in Mississippi where the applicant is employed, stationed, or assigned, attesting to the fact that the applicant is serving as a lawyer to provide legal services exclusively for the military, that the nature of the applicant's employment or service conforms to the requirements of this rule, and that the commanding officer, staff judge advocate or chief legal officer, or his or her successor, shall notify the clerk of the Supreme Court immediately upon the termination of the applicant's employment or service at the military base.

(3) Upon a finding by the clerk of the Supreme Court that the applicant has produced evidence sufficient to satisfy the clerk that the applicant is a person of honest demeanor and good moral character who possesses the requisite

fitness to perform the obligations and responsibilities of a practicing attorney at law and satisfies all other requirements of this rule, the clerk shall notify the applicant that he or she is eligible to be issued a Registered Military Legal Assistance Attorney Certificate. After the applicant has taken and subscribed to the oaths required of attorneys at law, the clerk shall issue to the applicant a Military Legal Assistance Attorney Certificate, which shall entitle the applicant to represent clients eligible for legal assistance in the courts and tribunals of this state solely as provided in this rule.

(4) The practice of a lawyer under this rule shall be subject to the limitations and restrictions of 10 U.S.C. § 1044 and the regulations of that lawyer's military service and shall be further limited to: (i) adoptions, (ii) guardianships, (iii) name changes, (iv) divorces, (v) paternity matters, (vi) child custody, visitation, child and spousal support, (vii) landlord-tenant disputes on behalf of tenants, (viii) consumer advocacy cases involving alleged breaches of contract or warranties, repossession, or fraud, (ix) garnishment defenses, (x) probate, (xi) enforcement of rights under the Service members Civil Relief Act (50 U.S.C. App. § 501 et seq.), (xii) enforcement of rights under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq., and (xiii) such other cases within the discretion of the court or tribunal before which the matter is pending.

(5) All pleadings filed by a legal assistance attorney shall cite this rule, and include the name, complete address and telephone number of the military legal office representing the client, and the name, grade and armed service of the lawyer registered under this rule providing representation.

(6) No lawyer registered under this rule shall (a) undertake to represent any person other than an eligible legal assistance client before a court or tribunal of this state, (b) offer to provide legal services in this state to any person other than as authorized by his or her military service, or (c) hold himself or herself out in this state to be authorized to provide legal services to any person other than as authorized by his or her military service.

(7) Representing clients eligible for legal assistance in the courts or tribunals of this state under this rule shall be deemed the practice of law and shall subject the lawyer to all rules governing the practice of law in Mississippi, including the Mississippi Rules of Professional Conduct and the Rules of Discipline. Jurisdiction of the Mississippi Bar shall continue whether or not the lawyer retains the Registered Military Legal Assistance Attorney Certificate and irrespective of the lawyer's presence in Mississippi.

(8) Each person receiving a Military Legal Assistance Attorney Certificate shall be registered with the Mississippi Bar as an active member on the basis of that certificate and shall be subject to the same membership obligations as other active members of the Mississippi Bar, other than the payment of dues and assessments and Continuing Legal Education requirements. A lawyer registered under this rule shall use as his or her address of record with the Mississippi Bar, the military address in Mississippi of the commanding officer, staff judge advocate or chief legal officer which filed the affidavit on the lawyer's behalf.

(9) Each person issued a Military Legal Assistance Attorney Certificate shall promptly report to the Mississippi Bar any changes in employment or military service, any change in bar membership status in any state or territory of the United States, or the District of Columbia where the applicant has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state or territory of the United States or the District of Columbia or by any federal court or agency where the applicant has been admitted to the practice of law.

(10) The limited authority to practice law which may be granted under this rule shall be automatically terminated when (a) the lawyer is no longer employed, stationed, or assigned at the military base in Mississippi from which the affidavit required by this rule was filed, (b) the lawyer has been admitted to the practice of law in this state by examination or pursuant to any other provision of the Rules Governing Admission to the Mississippi Bar, (c) the lawyer fails to comply with any provision of this rule, (d) the lawyer fails to maintain current good standing as an active member of a bar in at least one state or territory of the United States other than Mississippi, or (e) when suspended or disbarred for disciplinary reasons in any state or territory of the United States or the District of Columbia or by any federal court or agency where the lawyer has been admitted to the practice of law.

(f) *Pro bono publicus attorneys.*

(1) *Terminology.*

(i) A "pro bono publicus attorney" is: (a) an inactive member of the Mississippi Bar who is not otherwise engaged in the practice of law; or (b) an attorney licensed in a state other than Mississippi who:

will provide free legal services under the supervision of a qualified legal services provider as defined in this rule;

is licensed to practice law in at least one state and has no record of public discipline for professional misconduct imposed at any time within the past fifteen years and who did not resign or retire from the practice of law with disciplinary charges pending or in lieu of discipline; and

neither asks for nor receives personal compensation of any kind for the legal services rendered under this rule.

(ii) A "qualified legal services provider" for the purposes of this rule is a not-for-profit legal aid organization that is approved by the Mississippi Bar as set forth in this rule. A legal aid organization seeking approval from the Mississippi Bar for purposes of this rule shall file a petition with the Office of General Counsel of the Mississippi Bar certifying that it is a not-for-profit organization and specifically stating:

(a) the structure of the organization and whether it accepts funds from its clients;

(b) the major sources of funds used by the organization;

(c) the criteria used to determine potential clients' eligibility for legal services performed by the organization;

(d) the types of legal and non-legal services performed by the organization;

(e) the names of all members of the Mississippi Bar who are employed by the organization or who regularly perform legal work for the organization; and

(f) the existence of professional liability insurance that will cover the pro bono publicus attorney.

(2) *Limitations.*

(i) Except for the acts and services performed in association with a qualified legal services provider, a pro bono publicus attorney shall not otherwise engage in the active practice of law.

(ii) The pro bono publicus attorney shall not be paid by the qualified legal services provider, but the qualified legal services provider may reimburse the pro bono publicus attorney for actual expenses incurred while rendering services. The qualified legal services provider shall be entitled to receive any court-awarded attorneys fees for representation rendered by the pro bono publicus attorney. Collection of any money from the client, including but not limited to reimbursements for expenses incurred, shall be handled exclusively by and through the qualified legal services provider.

(iii) An attorney who complies with this rule permitting practice as a pro bono publicus attorney shall not be deemed to be engaged in the unauthorized practice of law as defined by Miss. Code Ann. § 73-3-55 (1972, as amended), the Mississippi Rules of Professional Conduct and pertinent case law.

(3) *Duties of pro bono publicus attorney.*

Before providing services under the authority of this rule, an attorney shall first present to the Office of General Counsel of the Mississippi Bar an affidavit containing the following:

(i) the attorney's full name, firm name, residence address, principal business address, telephone numbers, jurisdiction or jurisdictions in which the attorney is admitted, and bar identification numbers;

(ii) affirmation that the attorney is an inactive member of the Mississippi Bar or is duly licensed and in good standing and authorized to practice law in at least one state and has no record of public discipline for professional misconduct imposed at any time within the past fifteen years and did not resign or retire from the practice of law with disciplinary charge spending or in lieu of discipline;

(iii) affirmation that in performing all services under the authorization of this rule, the attorney will be acting as a volunteer for a qualified legal services provider;

(iv) affirmation that all services to be performed will be at no charge or expense to the client;

(v) affirmation that the attorney will abide by the Mississippi Rules of Professional Conduct and consents to the jurisdiction of the State of Mississippi for disciplinary action; and

(vi) affirmation that the attorney will not undertake to represent any person other than an eligible legal assistance client for a qualified legal services provider, shall not offer to provide legal assistance in this State to any person or for any matter other than through a qualified legal services provider, and shall not hold himself or herself out in this State to be authorized to provide legal services to any person or for any matter other than through a qualified legal services provider. (Amended effective January 16, 2003; amended effective May 27, 2004 to place the responsibility of obtaining, filing and serving the statement of the Clerk of the Supreme Court with the foreign attorney seeking leave to appear pro hac vice; amended effective January 27, 2005 to provide legal assistance to certain military personnel and their families; amended effective March 24, 2005 to make technical corrections in references to federal laws; amended effective December 14, 2006, to delete the 21-day waiting period for proceedings on application of foreign attorney to appear pro hac vice; amended effective October 18, 2007, to provide for *pro bono publicus* attorneys; amended effective July 1, 2009; amended effective August 2, 2012.)

Cross References — Attorney's MEC issued password combined with the user's login identification serves as attorney's signature for purposes of this rule, see Appellate E-Filing Administrative Procedures § 2.C.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective as to verified applications for leave to appear pro hac vice filed on or after March 1, 2003, Rule 46(b) and the Comment to Rule 46 were substantially amended to designate the Clerk of the Supreme Court as the central source from which to obtain a record of appearances by foreign attorneys, to enlarge the definition of "appearance," to clarify the definition of "general practice of law," to increase the role of local counsel, and to make other associated changes.

Effective January 1, 1995, Rule 46 replaced Miss.Sup.Ct.R. 46, embracing proceedings in the Court of Appeals. 644-647 So.2d LXXXVI-XC (West Miss.Cases 1994).

Effective October 29, 1992, Rule 46(c) was amended to state that an attorney must have the Court's approval to withdraw from representation before the Supreme Court. 603-605 So.2d XLVIII-XLIX (West Miss.Cases 1992).

[Adopted August 21, 1996.]

COMMENT

Rule 46 is based on Fed.R.App.P. 46(c) and the former rules of the Supreme Court. If the verified application required by Rule 46(b)(5) for admission pro hac vice is filed in a trial court or administrative agency, the application should be included in the record on appeal. In such cases, it is not necessary to file a separate application in the Supreme Court. Withdrawal from a criminal case is governed additionally by Rule 6 of these Rules. The Supreme Court has general disciplinary authority over attorneys practicing in this State. See Miss. Code Ann. § 73-3-301 (Supp. 1994). Rule 46(d) recognizes the Court's power to impose sanctions for frivolous pleadings. Cf. M.R.C.P. 11 (sanctions in trial court).

Major amendments to Rule 46(b) were adopted by order entered effective January 16, 2003 made to Rule 46(b). By the terms of the order adopting those amendments, Rule 46(b) as adopted applies to verified applications for leave to appear pro hac vice filed on or after March 1, 2003. Under the 2003 amendments, the Clerk of the Supreme Court was responsible for filing and serving a statement indicating all causes or other matters in which the foreign attorney previously requested leave to appear as counsel pro hac vice and the date and disposition of each request. By further amendment effective May 27, 2004, Rule 46(b)(5) was redrafted and now requires the attorney to obtain, file and serve the Clerk's statement with the verified application.

By the 2003 amendments, Rule 46(b)(1) broadens the previous definition of "appearance," and clarifies the definition of "general practice of law." "Appearance" now includes filing or appearing on "any pleading or other paper filed or served" in the cause or matter, "appearing personally before a court or administrative agency," and "participating in a deposition or other proceeding in which testimony is given."

"General practice of law" is now defined to include appearance as counsel pro hac vice by a foreign attorney in more than five (5) separate and unrelated causes or other matters before the courts or administrative agencies of this state within the 12 months immediately preceding the appearance in question. Consequently, a foreign attorney may not appear as counsel pro hac vice in more than five separate unrelated cases or other matters within any 12 month period, even if representation is terminated, or appear in more than five pending cases or other matters, regardless of when the appearance commenced.

As amended in 2003, Rule 46(b)(4) departs from prior practice and now requires that associated local counsel personally appear and participate in all depositions or other proceedings in which testimony is given in this state, in addition to all trials, pretrial conferences, hearings other proceedings conducted in open court. The local attorney may be specifically excused by the judge from attending proceedings other than trials.

The purpose of Rule 46(f) is to permit and encourage attorneys who do not engage in the active practice of law in Mississippi to provide legal representation to persons who cannot afford private legal services. Under certain circumstances, inactive members of the Mississippi Bar as defined by Miss. Code Ann. § 73-3-120(b) and members of bars in other states may provide pro bono legal services in the State of Mississippi. Attorneys over the age of seventy-five (75) who qualify as active members of the Mississippi Bar even if not engaged in the active practice of law are also encouraged to provide pro bono legal representation.

Rule 46(f)(1)(i) provides that a pro bono publicus attorney will provide free legal services under the supervision of a qualified legal services provider. This means that the legal services provider shall bear ultimate responsibility for the services provided under this rule.

Comment amended effective January 16, 2003; amended effective May 27, 2004 to place the responsibility of obtaining, filing and serving the statement of the Clerk of the Supreme Court with the foreign attorney seeking leave to appear pro hac vice; amended effective October 18, 2007; amended effective August 2, 2012.]

JUDICIAL DECISIONS

Failure to comply with procedures.
Pro hac vice admission.

Failure to comply with procedures.

Chancery court properly dismissed a first wife's motion to vacate because the wife's attorney was not licensed to practice law in the United States and could not use power of attorney to circumvent the statutory requirements; the attorney was not regularly admitted to practice in the State, was not admitted pro hac vice, and was also the only person who signed the motion to vacate. Fernando v. Sapukotana (In re Estate of Sapukotana), 179 So. 3d 1105 (Miss. 2015).

Tennessee attorney did not completely satisfy the requirements for pro hac vice admission to Mississippi before acting to represent defendant, and the trial court clearly erred in allowing the trial to proceed without the presence of local counsel as required by Miss. R. App. P. 46(b)(4), requiring reversal of his convictions. Newberry v. State, 145 So. 3d 652 (Miss. 2014).

Complaint by a Mississippi resident against an insurer arising out of uninsured motorist provisions of a policy was properly dismissed as time barred; the original complaint was properly refused by the circuit court clerk because it was signed by a Louisiana attorney who was not licensed to practice in Mississippi, and who had not been admitted pro hac vice. Mitchell v. Progressive Ins. Co., 965 So. 2d 679 (Miss. 2007).

Defendant's murder conviction was appropriate pursuant to Miss. R. App.P. 46(b) because she was procedurally barred from raising her attorney's failure to comply with Mississippi's pro hac vice requirements since she had already taken her chances with the jury and then lost her case. Lyle v. State, 908 So. 2d 189 (Miss. Ct. App. 2005).

The allegation that defense counsel failed to comply with the procedures for out-of-state counsel to appear pro hac vice in a particular cause did not warrant withdrawal of the defendant's guilty plea where defense counsel did not appear at the guilty plea hearing and, instead, local counsel, who was familiar with the local rules and practiced in this area of law was present when the defendant entered his plea of guilty at the hearing. Martin v. State, 749 So. 2d 375 (Miss. Ct. App. 1999).

Pro hac vice admission.

Chancery court erred in granting summary judgment to a Louisiana attorney in a Mississippi client's legal malpractice action because there was a genuine issue of material fact as to whether the attorney's letter to the client regarding his Mississippi personal injury claim violated Miss. Code Ann. § 73-3-55 and voided the parties' contingency-fee contract; there was evidence the attorney, who was not admitted to practice pro hac vice, Miss. R. App. P. 46, appeared before the Mississippi courts for at least two months and gave legal advice to the client. Forbes v. Louis St. Martin, 145 So. 3d 1184 (Miss. Ct. App. Mar. 5, 2013), reversed by 145 So. 3d 1124, 2014 Miss. LEXIS 258 (Miss. May 22, 2014).

Trial court erred in dismissing plaintiffs' case without prejudice pursuant to Miss. R. Civ. P. 11(a) and 41(b) based on the fact that plaintiffs were originally represented by a foreign attorney, who had not been admitted pro hac vice pursuant to Miss. R. App. P. 46 because a subsequent appearance by a member of the Mississippi Bar cured the error; the foreign attorney's violation of Miss. R. App. P. 46 and La. St. Bar art. XVI, R. 5.5(a), which prohibited the unauthorized practice of law, warranted sanctions against the attorney and notification of the violation to the Louisiana state bar. Dinet v. Gavagnie, 948 So. 2d 1281 (Miss. 2007).

Out-of-state attorney's motion for admission pro hac vice in a Mississippi medical malpractice case was properly denied because the attorney had engaged in the "general practice of law" by participating in more than five cases in a 12-month period, in violation of Miss. R. App. P. 46(b)(6)(ii); the attorney also engaged in the unauthorized practice of law by conferring with clients, advising them of their legal rights, and engaging a local attorney to litigate their claim. In re Williamson, 838 So. 2d 226 (Miss. 2002), writ of certiorari denied by 540 U.S. 821, 124 S. Ct. 133, 157 L. Ed. 2d 40, 2003 U.S. LEXIS 5634, 72 U.S.L.W. 3236 (2003).

Foreign attorney is deemed to have made an appearance in a Mississippi lawsuit if the attorney signs the pleadings, allows their name to be listed on the pleadings, physically appears at a docket call, a trial, a hearing, any proceeding in open court, a deposition, an arbitration, a mediation, or any other proceeding in which the attorney announces representation of a party to a lawsuit or is introduced to the court as a representative of a party to a lawsuit; any of these actions require the foreign attorney to be admitted pro hac vice and activates the prohibition of Miss. R. App. P. 46(b)(6)(ii). In re Williamson, 838 So. 2d 226 (Miss. 2002), writ of certiorari denied by 540 U.S. 821, 124 S. Ct. 133, 157 L. Ed. 2d 40, 2003 U.S. LEXIS 5634, 72 U.S.L.W. 3236 (2003).

Contempt convictions for two attorneys for allegedly misrepresenting facts in an affidavit under Miss. R. App. P. 46(b)(4), among other things, was reversed because the trial judge should have recused himself based on substantial personal involvement in the case; moreover, one of the attorneys was not given notice of the proceedings. In re Williamson, 838 So. 2d 226 (Miss. 2002), writ of certiorari denied by 540 U.S. 821, 124 S. Ct. 133, 157 L. Ed. 2d 40, 2003 U.S. LEXIS 5634, 72 U.S.L.W. 3236 (2003).

The court had jurisdiction to awarded attorney's fees and expenses against both the plaintiff and his out-of-state counsel, notwithstanding that counsel was no longer representing the plaintiff at the time of the award and his authority to practice law in the court pro hac vice had been rescinded, as he submitted to the jurisdiction of the court by appearing for the plaintiff and he was served with notice of the hearing on attorney's fees and expenses. Wyssbrod v. Wittjen, 798 So. 2d 352 (Miss. 2001).

Where the objectors to the annexation were individual family members, but they were members of a corporate business incorporated in Missouri, the city asked the appellate court to explore the possibility that standing was absent due to the out of state citizenship of the corporation. Contrary to the objectors' arguments that since they were also properly owners, the standing argument warranted sanctions, the city's argument, while ultimately not successful, could not be classified as frivolous and did not warrant sanctions. Weeks v. City of Clinton (In re City of Clinton), 920 So. 2d 452 (Miss. 2006).

Rule 47. Prohibition against practice.

No one serving as clerk of the Supreme Court or as a law clerk or secretary to a justice of the Supreme Court or a judge of the Court of Appeals or as an employee of either court shall practice as an attorney or counselor in any court or before any agency of government while holding that position. No such person shall, after separating from that position, ever participate, by way of any form of professional consultation or assistance, in any case that was pending in either court during the tenure of such position.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 47 replaced Miss.Sup.Ct.R. 47, embracing proceedings in the Court of Appeals. 644-647 So.2d XC (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

Rule 47 is based on U.S.Sup.Ct.R. 7 and the prior rules of the Supreme Court.

Rule 48. Appellate procedure following denial of waiver of consent to abortion.

Notwithstanding any provision in the Mississippi Rules of Appellate Procedure to the contrary, this Rule shall govern appeals by an unemancipated minor or her next friend from an adverse judgment or order of a chancery court in a waiver proceeding under Miss. Code Ann. § 41-41-55 (1993). For the purposes of this Rule, the term "minor" means a person under the age of eighteen (18) years.

If, in a proceeding initiated under said enactment by a minor or her next friend for waiver of the parental consent requirements to an abortion, judgment is entered denying such waiver, and the minor or next friend desires to appeal from such adverse judgment, an appeal to the Supreme Court may be taken by filing within forty-eight (48) hours after entry of such adverse judgment a written request that the record of the proceeding be certified to that Court. Promptly after filing of such request, the trial judge, within thirty-six (36) hours of notice, shall certify the judgment, together with the petition initiating the proceeding and either a stipulation of the facts or an electronic transcription of the evidence taken in the proceeding, and shall forward same to the Supreme Court. No motion to correct error or notice of appeal shall be filed.

In order to ensure anonymity and confidentiality, any written transcripts of the lower court proceedings, documents, or briefs shall make reference to said minor's identity by use of her initials only. The minor's name is not to be disclosed for purposes of this appeal.

The appeal shall be determined on the record so certified within seventy-two (72) hours of receipt in the office of the Mississippi Supreme Court clerk excluding Saturdays, Sundays, and holidays without briefs or oral argument unless the Supreme Court orders otherwise. Any party may, however, file a short statement of special points desired to be brought to the attention of the Supreme Court, which statement need not conform to the usual requirement for appellate briefs.

As provided under Mississippi Code Ann. § 41-41-55 3(7), "No filing fees shall be required by any minor who avails herself of the procedures provided by this section."

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 48 replaced Miss.Sup.Ct.R. 48. 644-647 So.2d XCI (West Miss.Cases 1994).

[Adopted August 21, 1996.]

No comment to this Rule

JUDICIAL DECISIONS

Appeal.

Chancellor did not abuse his discretion in failing to recuse himself because an attorney failed to file an affidavit with his motion to recuse, failed to obtain a ruling from the chancery court on his motion to stay the proceedings, and failed to appeal the denial of his recusal motion through an interlocutory appeal to the supreme court. In re Guardianship of McClinton, 157 So. 3d 862 (Miss. Ct. App. 2015).

Rule 48A. Confidential cases and sealed filings.

(a) *Cases treated as confidential on filing.* Any case filed with the clerk of the Supreme Court and Court of Appeals which was previously closed to the public by action of the trial court or which by statute is subjected to restriction on access to the public in the trial court by statute, shall be closed to public access in the appellate courts and shall be treated as a confidential case by the clerk of the appellate courts.

(b) *Cases which may be designated as confidential on order of the appellate court.* In the event that the appellate court shall determine that a case contains information the public disclosure of which will cause substantial harm to the welfare of a child or otherwise contains sensitive information the public disclosure of which will cause substantial harm, the appellate court may direct that such case be closed to public access and shall, upon order of the appellate court, be treated as a confidential case by the clerk. Pending determination by the appellate court of whether a case should be so treated, the clerk is authorized to deny access without order.

(c) *Sealed documents.* Where parties shall file documents physically under seal with the clerk of the appellate courts, such documents shall remain sealed until the appellate court by order removes the seal. The mere filing of documents with a request that they be sealed shall not constitute the filing of sealed documents. Such documents shall remain open until the appellate court on motion of a party or on its own motion orders that they be sealed.

(d) *Requests for Access.* Any person or entity with an interest in the proceedings may by motion request access to any case or filings therein by motion presenting their interest and argument for access, and such motions shall be ruled on expeditiously.

(e) *Other Provisions.* The designation of a case as closed shall not restrict access of the parties, counsel of record, appellate court or of court staff as needed to address the case. Sealed documents may be opened at the direction of a justice as needed to address the case without ordering that the seal, as to the public, be removed. Where necessary to accomplish the purpose of designating a case as confidential, the style of the case shall be amended so as to prevent disclosure of the names of parties. Access to the records concerning such cases shall be granted only upon order of the appellate court. (Adopted effective March 29, 2001.)

Rule 48B. Proceedings on motion for disqualification of trial judge.

If a judge of the circuit, chancery or county court shall deny a motion seeking the trial judge's recusal, or if within 30 days following the filing of the motion for recusal the judge has not ruled, the filing party may within 14 days following the judge's ruling, or 14 days following the expiration of the 30 days allowed for ruling, seek review of the judge's action by the Supreme Court. A true copy of any order entered by the subject judge on the question of recusal and transcript of any hearing thereon shall be submitted with the petition in the Supreme Court. The Supreme Court will not order recusal unless the decision of the trial judge is found to be an abuse of discretion. Otherwise, procedure in the Supreme Court shall be in accordance with M.R.A.P. 21. Appointment of another judge to hear the case shall be made as otherwise provided by law. (Adopted April 4, 2002.)

JUDICIAL DECISIONS

No abuse of discretion.
Time for appeal.

No abuse of discretion.

Appellant's claim that the chancellor should have recused herself was without merit; the chancellor did not make any disparaging personal comments about appellant, nor did the transcript indicate any evidence of bias towards her, and it was not prejudicial for the chancellor to have reprimanded appellant on the record for not pursuing her own defense; furthermore, she did not file a motion to recuse the chancellor in the chancery court even after the Mississippi Supreme Court entered its order, and thus the issue was barred. Adams v. Rice, 249 So. 3d 463 (Miss. Ct. App. 2018).

Not only was property owner's appeal of his motion to recuse a county court judge failed to abide by the requirements of Miss. R. App. P. 48B because it was improperly filed with the county court clerk, instead of with the Supreme Court of Mississippi and it did not contain a transcript of the recusal proceedings, but his motion for recusal did not abide by the requirement of Miss. Unif. Cir. & Cty. R. 1.15 because it was not filed with the appropriate affidavit and was untimely. Furthermore, county court judge did not have to recuse himself under Miss. Code Jud. Conduct Canon 3(E)(1) or Miss. Unif. Cir. & Cty. R. 1.15 because not only was the county court judge's prior knowledge merely from presiding over the case in open court, not from any sort of improper ex parte prior knowledge, but the owner's case was dismissed based on the statute of limitations, which did not require the county court judge to interpret his prior order. Whitley v. City of Pearl, 994 So. 2d 857 (Miss. Ct. App. 2008).

Trial court did not violate Miss. Code Jud. Conduct Canon 3. Trial judge's alleged impartiality was not apparent merely because he had presiding over previous criminal proceedings against defendant, or because he had sequestered the names of the jurors; moreover, this decision remained at the discretion of the trial judge. King v. State, 897 So. 2d 981 (Miss. Ct. App. 2004), writ of certiorari denied by 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

Time for appeal.

Appellate court lacked jurisdiction to consider a judgment creditor's appeal because no final judgment had been entered in the case, and the creditor failed to file a timely appeal from the circuit judge's denial of the recusal motion where the court took the creditor's motions for default judgments under advisement, the creditor's motion for tax records was simply an interlocutory ruling on a discovery matter, and after the circuit judge denied the creditor's recusal motion, the creditor not only failed to seek review within 14 days following the judge's ruling, the creditor failed to file a "petition in the Supreme Court" along with a copy of the trial judge's order. Patriot Prod. Grp. Llc v. Livingston Operating Co. Llc, — So. 3d —, 2019 Miss. App. LEXIS 304 (Miss. Ct. App. June 25, 2019).

Patient's argument for recusal failed, as she failed to file a motion for recusal and, even if her listing the judge as a potential witness was effectively an ore tenus motion that satisfied Miss. Unif. Cir. & Cty. R. 1.15, she did not seek appellate review within 14 days. Doe v. Rankin Med. Ctr., 195 So. 3d 705 (Miss. 2016).

In a personal injury action by guests against a casino, an appeal of the denial of the guests' recusal motion was time-barred where the guests failed to perfect a notice of appeal within 44 days after filing the recusal motion. Doll v. BSL, Inc., 41 So. 3d 664 (Miss. 2010).

Under Miss. R. App. P. 4, using the language "shall," required a party to file a notice of appeal within 30 days, while Miss. R. App. P. 48B, using the language "may," permitted a party to seek review within 14 days; therefore, the employee's appeal was timely because it was filed in accordance with Miss. R. App. P. 4. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844 (Miss. 2005).

Rule 48C. Disqualification of justices or judges of the appellate courts.

(a) *Disqualification of justices and judges of the Supreme Court or Court of Appeals.*

(i) Any party may move for the recusal of a justice of the Supreme Court or a judge of the Court of Appeals if it appears that the justice or judge's impartiality might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or, if the party is represented, by the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true.

(ii) Any such motion for recusal shall be filed no later than 30 days following the notification by the clerk of the court that a case has been assigned to either appellate court, or, in the case of a motion or petition which is not filed within a proceeding initiated by a notice of appeal or where the facts upon which the motion is based could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted.

(iii) Motions for recusal shall be decided in the first instance by the justice or judge who is the subject of the motion. The remainder of the court on which such justice or judge serves shall, prior to the order being entered, be informed of a decision of a justice to deny recusal, and such decision shall be subject to review by the entire court upon motion for reconsideration filed within 14 days following the issuance of an order denying recusal.

Comment

Although Rule 27(h) generally provides that motions, other than those addressed by the Clerk of the Courts under Rule 27(b), are only subject to reconsideration on the court's own motion, special provision is made in this rule for reconsideration of motions for recusal of appellate court justices and judges.

(b) *Supreme Court review of orders of the court of appeals addressing recusal of judges.* No decision concerning the recusal of a judge of the Court of Appeals shall be subject to review by the Supreme Court unless, upon timely motion, the Court of Appeals has denied reconsideration of the motion. A party may, within 14 days following the denial of reconsideration by the Court of Appeals, file a motion with the Supreme Court seeking further review, and the Supreme Court, en banc, shall promptly consider such recusal. Such motion for further review by the Supreme Court shall be accompanied by a copy of the order entered by the judge who is the subject of the motion for recusal, the order denying reconsideration, and the motions for recusal and reconsideration by the Court of Appeals. (Adopted effective October 17, 2002.)

JUDICIAL DECISIONS

Purpose.
Recusal denied.

Purpose.

State Supreme Court adopted Miss. R. App. P. 48C that established procedures for consideration and review of motions for recusal of Supreme Court justices and judges of the appellate courts after having determined that the fair and efficient administration of justice would be promoted by establishing such procedures. In re Miss. Rules of Appellate Procedure, — So. 2d —, 2002 Miss. LEXIS 303 (Miss. Oct. 17, 2002).

Recusal denied.

In movant's motion to recuse an appellate court judge pursuant to Miss. R. App. P. 48C(b), the movant alleged that the judge had a bias based on statements in the judge's successful appellate court campaign that the judge would fight the special interest groups — like the personal injury lawyers who had created the lawsuit industry; however, because (1) the judge's voting record during his tenure on the appellate court did not indicate that he lacked impartiality towards a personal injury plaintiff represented by a personal injury lawyer and (2) the judge voted in the movant's favor on the merits, a reasonable person, knowing all the circumstances, could not question the judge's impartiality, Miss. Code Jud. Conduct Canon 3(E)(1)(a). Thus, the motion to recuse the judge and the motion to reconsider the judge's denial of the recusal motion were properly denied. Doe v. Stegall, 900 So. 2d 357 (Miss. 2004).

Rule 49. Title.

These Rules shall be known as the Mississippi Rules of Appellate Procedure and may be cited as M.R.A.P.

Comments to the Supreme Court Rules have been amended to reflect the application of the rules to the Court of Appeals.

ADVISORY COMMITTEE HISTORICAL NOTE

Effective January 1, 1995, Miss.R.App.P. 49 replaced Miss.Sup.Ct.R. 49, changing the name of the Rules to the Mississippi Rules of Appellate Procedure. 644-647 So.2d XCI-XCII (West Miss.Cases 1994).

[Adopted August 21, 1996.]

COMMENT

The Mississippi Rules of Appellate Procedure, effective January 1, 1995, are based on the Mississippi Supreme Court Rules and were adopted to include procedure in the Court of Appeals of the State of Mississippi pursuant to Miss. Code Ann. § 9-4-1 et seq. (Supp. 1994).

Rule 50. Appellate Mediation (Effective April 2, 2018).

(a) *Notice.* Upon either receipt of the copy of the notice of appeal transmitted by the clerk of the trial court under Rule 3 (d) or entry of the order granting permission to appeal under Rule 5(d), the clerk of the Supreme Court must notify the parties in eligible civil cases that appellate mediation is available under this Rule. The notification must include contact information for the appellate mediation coordinator designated by the Alternative Dispute Resolution Section of The Mississippi Bar.

(b) *Participation.* Participation in appellate mediation is voluntary.

(c) *Eligibility.*

(1) *Eligible Cases.* Except as provided in paragraph (c)(2), any appeal from a final or interlocutory order in a civil case may be mediated if all parties consent and are represented by counsel.

(2) *Ineligible Cases.* Appellate mediation is unavailable for criminal cases or civil cases involving utility rates, annexations, bond issues, election contests, the Mississippi Public Service Commission, the Mississippi Uniform Post-Conviction Collateral Relief Act, or a ruling that a statute is unconstitutional.

(d) *Procedure.*

(1) *Selection of a Mediator.*If the parties agree to mediate, they must first either agree on and retain a mediator or contact the appellate mediation

coordinator designated by the Alternative Dispute Resolution Section of The Mississippi Bar for assistance in selecting a mediator.

(2) *Joint Motion for Stay.*Upon agreement to mediate, the parties must file a joint motion to stay the appeal. Parties may also agree — without supersedeas bond or other security — to stay execution of a money judgment or enforcement of an order or injunction while the case is being mediated. If the joint motion is filed within 90 days of the filing of the notice of appeal, a 90-day stay must be granted. If the joint motion is filed thereafter, a stay may be granted in either appellate court's discretion.

(3) *Effect of Stay.*The appellate process —including preparing and filing the court reporter's transcript, the clerk's record, and briefs — will be stayed according to the terms of the order.

(4) *Matters Not Stayed*The time for filing a notice of appeal or notice of cross-appeal is not stayed.

(e) *Settlement.* If a full and final settlement is reached, the parties must file a joint motion to dismiss the appeal.

(f) *Impasse.* If mediation reaches an impasse, any party may move to have the stay lifted immediately.

(g) *Extensions.* If good cause for additional time is shown, the parties may jointly move to extend the stay before it expires.

(h) *Resumption of deadlines.* The stay lifts upon the expiration date set forth in the order granting or extending the stay, and all appellate duties and deadlines will resume. Within 7 days after the stay expires or is lifted, the appellant must make satisfactory arrangements with the court reporter and trial court clerk for preparation of the transcript and record on appeal.

(i) *Fees and expenses.* Unless otherwise agreed, the parties shall split the costs of mediation. (Adopted effective April 2, 2018.)

APPENDIX I. FORMS

Form 1.

IN THE ________ COURT OF THE ________ JUDICIAL
DISTRICT OF ________________ COUNTY, MISSISSIPPI

________________________________ PLAINTIFF

VS.

NO.________

________________________________ DEFENDANT

NOTICE OF APPEAL

By this notice, ____________________ appeals to the Supreme Court of Mississippi against ________________________ [name(s) of appellee(s)] from the final judgment entered in this case on, ____________________, ________, and the denial of the Motion for Judgment Notwithstanding the Verdict or, in the Alternative, for New Trial, by order entered on ____________________, ____________.

Respectfully submitted,

[Appellant]

s/________________________

Attorney for Appellant

[Address]

CERTIFICATE OF SERVICE

I, ____________________, attorney for appellant, ________________________, certify that I have this day filed this Notice of Appeal with the clerk of this Court together with the docket fee to be received by the clerk on behalf of the Supreme Court of Mississippi, and have served a copy of this Notice of Appeal by United States mail with postage prepaid on the following persons at these addresses:

[Attorney for Appellee with Address]

[Court Reporter with Address]

This the________ day of ________________, ____________.

s/________________________

Attorney for Appellant (Adopted to govern matters filed on or after January 1, 1995; amended May 23, 2002.)

Form 2.

IN THE __________ COURT OF THE __________ JUDICIAL
DISTRICT OF __________ COUNTY, MISSISSIPPI
____________________ PLAINTIFF
VS.
NO.__________
____________________ DEFENDANT

DESIGNATION OF THE RECORD

________________, appellant, by counsel, pursuant to M.R.A.P. 10(b)(1), designates the following parts of the record as being necessary to be included on appeal:
All clerk's papers, trial transcripts and exhibits filed, taken or offered in this case.

[or]

1. The Complaint.
2. The Answer and Defenses.
3. Plaintiff's Motion to Compel Discovery, and the Court's Order entered on ______________, __________. ________ overruling that motion.
4. A transcript of the trial of this case on ________, __________, including voir dire and all in chambers conferences, and all exhibits offered and marked for identification or admitted into evidence.
5. All jury instructions filed or granted.
6. The judgment entered on ________, __________.
7. The Motion for Judgment Notwithstanding the Verdict, or, in the Alternative for New Trial, and the Court's Order filed ________, __________, overruling the motion. *

THIS the day of ________, __________.

Respectfully submitted,

[Appellant]

s/____________________

Attorney for Appellant

[Address]

* In a criminal case, the sentencing order should be included.

CERTIFICATE OF SERVICE

I, ________________, attorney for appellant ________________, certify that I have this day served a copy of this Designation of the Record by

United States mail with postage prepaid on the following persons at these addresses:

[Attorney for appellee with address]

[Court reporter with address]

This the day of________, 20 ________.

s/____.

Attorney for Appellant

COURT REPORTER'S ACKNOWLEDGMENT

[Deleted effective January 12, 2017.] (Adopted to govern matters filed on or after January 1, 1995; amended May 23, 2002; amended January 12, 2017.)

Form 3.

IN THE ____________ COURT OF THE ____________ JUDICIAL

DISTRICT OF ____________ COUNTY, MISSISSIPPI

________________________ PLAINTIFF

VS.

NO. ____________

________________________ DEFENDANT

CERTIFICATE OF COMPLIANCE WITH RULE 11(b)(1)

I, ____________, attorney for appellant ____________, certify that I have complied with M.R.A.P. 11(b) and that the estimated cost of preparing the designated record on appeal is $____________, and I have on or before this day deposited that sum with the clerk of this Court.

This the day of ________, ____________.

Respectfully submitted,

[APPELLANT]

s/________________________

Attorney for Appellant

[Address]

CERTIFICATE OF SERVICE

I, ____________________, attorney for appellant ____________________, certify that I have this day served a copy of this Certificate of Compliance with Rule 11(b)(1) by United States mail with postage prepaid on the following persons at these addresses:

[Attorney for appellee with address]

[Court reporter with address]

This the day of ________, ___________.

Attorney for Appellant (Adopted to govern matters filed on or after January 1, 1995; amended May 23, 2002.)

Form 4.

IN THE CIRCUIT COURT OF THE ___________ JUDICIAL DISTRICT
OF ___________ COUNTY, MISSISSIPPI*

STATE OF MISSISSIPPI

VS. NO. ___________

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

I, ___________, being first duly sworn, depose and say that I am the __________ in this case; that, in support of my motion to proceed on appeal without being required to prepay fees and costs, I state that because of my poverty I am unable to pay the fees and costs of this proceeding and that I believe I am entitled to redress.

I further swear that the responses which I made to the question and instructions below relating to my ability to pay the fees and costs of prosecuting the appeal are true.

1. Are you presently employed? ________

a. If the answer is yes, state the amount of your salary and wages per month and give the name and address of your employer.

____

____

____

____

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

____

____

____

____

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rental payments, interest, dividends, or other source?

____

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

____

* An affidavit filed in the Supreme Court accompanying an application under M.R.A.P. 22 for post-conviction collateral relief after an appeal has been affirmed or dismissed should be captioned "In the Supreme Court of Mississippi."

3. Do you own any cash or checking or savings account? ________

a. If the answer is yes, state the total value of the items owned.

____

____

____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

____

____

a. If the answer is yes, describe the property and state its approximate value.

____

____

____

5. List the persons who are dependent upon you for support and state your relationship to those persons.

____

____

____

____

I understand that a false statement or answer to any question or instruction in this affidavit will subject me to penalties for perjury.

____

Signature of Applicant

STATE OF ____________________

COUNTY OF ____________________

SUBSCRIBED AND SWORN TO before me this ____________ day of ____________, ________.

____

Notary Public

MY COMMISSION EXPIRES ____________________

* An affidavit filed in the Supreme Court accompanying an application under M.R.A.P. 22 for post-conviction collateral relief after an appeal has been affirmed or dismissed should be captioned "In the Supreme Court of Mississippi." (Adopted to govern matters filed on or after January 1, 1995; amended May 23, 2002.)

Form 5.

IN THE ______________ COURT OF THE ______________ JUDICIAL
DISTRICT OF ____________________ COUNTY, MISSISSIPPI
________________________________ PLAINTIFF
VS.
NO.________
________________________________ DEFENDANT

APPEAL BOND TO SUPREME COURT OF MISSISSIPPI
WITH SUPERSEDEAS
STATE OF MISSISSIPPI
COUNTY OF ________________________

BECAUSE IN THIS CAUSE pending in the ________________ Court of the ____________ Judicial District of ________________ County, Mississippi, a final judgment was entered in favor of ____________________, plaintiff, against ____________________, [one of the] defendant[s], on ____________________, ____________, and defendant's post-trial motions were denied, the defendant, ________________, desires to prosecute an appeal to the Supreme Court of Mississippi with supersedeas pursuant to Mississippi Rule of Civil Procedure 62 and M.R.A.P. Rule 8.

KNOW ALL BY THIS BOND, that we, __________________, as principal, and ____________________, a guaranty or surety company authorized to do business in the State of Mississippi, are held and firmly bound unto plaintiff

__________________, or [his/her/its] administrators, executors, successors or assigns, in the penal sum of $________ for which payment to be made, we bind ourselves, our successors and assigns, jointly and severally.

THE CONDITION OF THE FOREGOING OBLIGATION is that, if the defendant, ________________, shall prosecute this appeal with effect in the Supreme Court of Mississippi and shall satisfy the judgment complained of in full, together with costs, interest, penalties, and damages, if for any reason the appeal is dismissed or if the judgment is affirmed, or shall satisfy in full such modification of the judgment and such costs, interest and damages as the Supreme Court of Mississippi or the Court of Appeals may adjudge against the defendant, then this obligation will be void; otherwise, it will remain in full force and effect.

[Principal]

BY: s/______________________________

[Principal or Attorney]

[Guaranty or Surety Company]

BY: s/______________________________

Agent and Attorney-in-Fact

[Guaranty or Surety Company]

[Address] *

THIS SUPERSEDEAS BOND AND SURETY ARE APPROVED and the judgment complained of is stayed pending appeal on this the day of ________, ____________.

____

____ Clerk,

____ County, Mississippi

* The address should be an address to which the clerk of the trial court can send notice of a motion to enforce liability. *See* M.R.A.P. 8(d).

[Adopted to govern matters filed on or after January 1, 1995; amended May 23, 2002.]

Form 6.

IN THE ________________ COURT OF THE ________________ JUDICIAL

DISTRICT OF ________________________ COUNTY, MISSISSIPPI

________________________ PLAINTIFF

VS.

NO. ______

______________________ DEFENDANT

LIST OF CLERK'S PAPERS *

PAPER FILED	PAGE NUMBER ON APPEAL
1. Docket Sheet	1
2. Complaint etc.	
3.	
4.	
5.	

* Use this separate typed list if docket sheet is illegible or for any other reason a satisfactory list cannot be produced by adding record page numbers to the docket sheet. M.R.A.P. 11(d)(1)(i).

APPENDIX II. STATUTES MODIFIED OR SUPPLANTED

Miss.Code Ann. §	M.R.A.P.	Effect of Rule
Supreme Court		
9-3-3	26(d)	Period of time unaffected by terms.
Common Practice Provisions		
11-1-17	15	Writ of mandamus to require trial court decision replaces automatic appeals.
Practice in Circuit Courts Appeals		
11-51-3	8	Procedure for *supersedeas* now set forth in Rule 8
11-51-9	1, 5	All orders that meet requirements of Rule 5 may be considered on interlocutory appeal.
11-51-37	8	Supersedeas bond, when judgment directs sale or delivery of possession of real estate, to be set at 125% of value, or at lower amount at discretion of trial judge.
11-51-39	8	Supersedeas bond when judgment directs sale or delivery of possession of real estate, to be set at 125% of value, or at lower amount at discretion of trial judge.
11-51-43	8	Judges have discretion in all

supersedeas cases
(Amended March 17, 1995.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective March 17, 1995, Appendix II was amended to delete references to repealed statutes. 650 So.2d XXXIV-LXXXV (West Miss.Cases 1995).

[Adopted August 21, 1996.]

APPENDIX III. MISSISSIPPI SUPREME COURT RULES GUIDELINES FOR COURT REPORTERS

I. TRANSCRIPTS — HOW PREPARED

Transcripts of all administrative and judicial proceedings shall be uniform in and for all state courts throughout the State of Mississippi. The form, size, spacing and method of transcript preparation are as follows:

(a) All proceedings shall be typewritten only on one side of every leaf of paper eight and one-half (8 ½) inches wide and eleven (11) inches long, prepared for binding at the left margin. The purpose of this requirement is to facilitate a system-wide transfer from legal size paper to letter size paper effective July 01, 1993. See M.R.A.P. 11, 32, and M.R.C.P. Rule 7. Voluntary compliance with this Rule is to begin January 01, 1993; mandatory compliance will become effective July 01, 1993.

The cost of transcription shall be two dollars forty cents ($2.40) per page. The court reporter shall make an electronic disk of the transcript. No charge shall be made for the electronic disk or for the copy of the transcript provided for under Section II of this Appendix.

(b) Type size or print shall be nine to ten characters per inch.

(c) Each page shall be numbered consecutively at the top right hand corner. In cases where proceedings have been taken by more than one reporter, each court reporter shall consecutively number his or her portion of the transcript in the upper right hand corner of each page. After completion of the entire transcript, including all pretrial and post-trial hearings, the entire transcript shall be consecutively numbered in the center of the bottom of each page, beginning with page one and continuing throughout the remainder of the proceedings. This final numbering of the pages shall be the responsibility of the court reporter who reported the trial on the merits, or, in the case of disposition prior to trial on the merits, the court reporter who reported the majority of the proceedings prior to disposition. The final numbering of the pages, which may be made by hand or machine, shall be made by the designated court reporter within 20 days of receipt of written notification from the trial court clerk that all portions of the original transcript have been completed and are awaiting final numbering for appeal purposes.

(d) All margins, measured from the edge of the paper, shall be not more than one (1) inch from the top and exactly one and one-half inches at the left, three-quarters of one inch (¾) from the bottom, and one-half (½) inch at the right.

(e) There shall be no fewer than twenty-nine (29) typed lines per page. Each typed line is to be numbered at the left margin. All typing shall extend to the right margin, and shall be double spaced with no more than a double space between paragraphs.

(f) Colloquy material shall begin on the same line following the identification of the speaker, but in no event shall there be more than two spaces between the identification of the speaker and the commencement of the colloquy. The identification of the speaker in colloquy shall begin no more than fifteen (15) spaces from the left margin and carry-over colloquy shall be indented no more than ten (10) spaces from the left margin. The identification of the speaker in colloquy shall be capitalized.

(g) Each question and answer shall begin on a separate line no more than five (5) spaces from the left margin with no more than five (5) spaces from the "Q." or "A." to the text. Carry-over question and answer lines shall be brought to the left margin.

(h) Identification of the witness and type of examination shall appear at the top left corner of each page above the first line of numbered text. In all jury trials when the jury is out, the top of each page shall be so marked (Jury Out).

(i) Opening statement and closing arguments shall begin at the left margin and extend to the right margin of the transcript.

(j) The transcript shall be prefaced with a title page setting out the style, number and counsel appearances. A comprehensive table of contents of the entire transcript numbered seriatim at the right top, shall immediately follow the title page. A Court Reporter's Certificate shall conclude the transcript. In cases involving more than one court reporter, the certification shall appear at the end of the section of the transcript prepared by that reporter.

(k) Exhibits shall be identified in all capital letters. Where possible, all exhibits shall be marked on the front page with an exhibit label.

[Amended effective June 3, 2004.]

Comment

Miss. Code Ann. § 25-7-89 (Rev. 2004) establishes the rate to be charged by the court reporters for transcripts at $2.40 per page. Under the statute, the reporter is also required to file with the clerk an additional copy of the transcript at no additional charge.

[Adopted effective June 3, 2004.]

II. TRANSCRIPTS — HOW FILED

(a) Upon completion of the transcript, the court reporter shall certify the transcript and attach the certification at the end of the transcript. The reporter shall then make a copy of the original transcript and bind in suitable covers both the original and copy at the left. Each volume shall contain no more than 150 pages and shall be consecutively labeled with Roman Numerals, i.e. Volume I, Volume II, etc. The reporter shall also prepare a copy of the transcript on electronic disk. The reporter shall simultaneously file the electronic disk and the transcript with the trial court clerk. *See* M.R.A.P. 11(c).

For electronic filing, upon completion of the record, the court reporter shall certify the transcript and attach the certification at the end of the transcript. The reporter's password issued by the Mississippi Electronic Courts (MEC) combined with the reporter's login identification serves as the reporter's signature for certification and other purposes. The reporter shall then either file the certified transcript electronically or deliver the certified transcript on an electronic disk to the clerk.

(b) Upon review of the completed transcript, should the parties agree on corrections, or should the trial court order corrections as to form only, the reporter shall verify that the corrections are required. Within seven (7) days after receiving the record for corrections, the reporter shall complete the corrections on the original transcript, the transcript copy and the electronic disk. M.R.A.P. 10(b)(5).

(c) Unless otherwise ordered by the trial or appellate courts, deposition testimony shall not be taken by the reporter during the course of the trial, provided a written transcript (not a videotape or other recording) of the deposition testimony is marked as an exhibit for identification and made part of the record. If only portions of deposition testimony are read, the page and line numbers shall be noted, along with all objections made and rulings of the court. Where only portions of the deposition are read in random order, such deposition shall be placed in the transcript as it is read into the record.

III. SANCTIONS FOR NONCOMPLIANCE

In the event that any court reporter shall fail to comply with the Mississippi Rules of Appellate Practice, the Guidelines for Court Reporters, or any order issued pursuant thereto, the Supreme Court may impose such sanctions as may be appropriate, including but not limited to, imposition of reasonable fines and citation of contempt. The judges of the lower courts shall have concurrent jurisdiction with the Supreme Court for the purpose of imposing sanctions in the event any court reporter, lower court clerk or attorney of record fails to comply with the rules governing appeals. If the judge of the lower court finds it necessary to impose sanctions, a copy of the sanction order shall be immediately forwarded to the Clerk of the Supreme Court. Sanctions imposed by a lower court judge are subject to review by the Supreme Court for abuse of discretion. (Amended May 13, 1996; amended effective January 12, 2017.)

ADVISORY COMMITTEE HISTORICAL NOTE

Effective May 13, 1996, Appendix III, Section II was amended to add subsection (c). 668-672 So.2d XXXIII (West Miss. Cases 1996).

[Adopted April 17, 1997; amended effective July 1, 1998.]

APPENDIX IV. FORMS FOR COURT REPORTERS

Form 1.

SUBJECT

COURT REPORTER'S ACKNOWLEDGMENT
OF DESIGNATION OF RECORD

COURT REPORTER'S ACKNOWLEDGMENT

[Deleted effective January 12, 2017]

Form 2.

SUBJECT

TITLE PAGE - GENERAL

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

SALLY ANN SMITH	PLAINTIFF
VS.	NO _______
EVERYMAN'S INSURANCE CO. INC.	DEFENDANT
A Mississippi Corporation	

TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE TRIAL OF THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE THE HONORABLE JAMES B. JUSTICE, CIRCUIT JUDGE, AND A JURY OF TWELVE MEN AND WOMEN, DULY IMPANELED, ON THE 10TH DAY OF NOVEMBER, _______.

APPEARANCES:

Present and Representing the Plaintiff:

HONORABLE DON Q. JONES
Attorney at Law
10 Court Street
Happy, Mississippi 39200

Present and Representing the Defendant:

HONORABLE SAM SMITH
Attorney at Law
125 Losers Lane
Happy, Mississippi 39200

Form 3.

SUBJECT

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SUBJECT

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Form 6.

SUBJECT

COURT REPORTER'S CERTIFICATE

(NOTE: This certificate should be double spaced in transcript.)

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF TOMBIGBEE

I, Merry Reporter, Official Court Reporter for the Seventh Circuit Court District of the State of Mississippi, and Deputy Circuit Clerk of Tombigbee County, Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings had and done in the trial of ED SMITH VS. EVERYMAN'S INSURANCE CO. INC. being No. 12,040 on the docket of the Circuit Court of the First Judicial District of Tombigbee County, Mississippi, and that the above and foregoing two hundred and fifty (250) pages contain a true, full and correct transcript of my stenographic notes and tape taken in said proceedings.

This is to further certify that I have this date filed the original and one copy of said transcript, along with (number) of (3.5" or 5.25") electronic disks of said transcript in ________________ language, for inclusion in the record on appeal, with the Clerk of the Circuit Court of Tombigbee County, Mississippi, and have notified the attorneys of record, the Circuit Clerk and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript and electronic disks. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the ________ day of ____________________, ________.

____
MERRY REPORTER
Official Court Reporter

COURT REPORTER'S FEE:
$500.00

Form 7.

SUBJECT

MOTION FOR EXTENSION OF TIME

(NOTE: A copy of this motion should be mailed to the attorneys of record.)

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY MISSISSIPPI

STATE OF MISSISSIPPI	PLAINTIFF
VS.	NO. A-234
JOHN DOE	DEFENDANT

MOTION FOR EXTENSION OF TIME

Comes now Merry Reporter, Official Court Reporter for the Seventh Circuit Court District of the State of Mississippi and respectfully moves the Court for ________ days additional time in which to prepare the trial transcript of the above styled and numbered cause and would show unto the Court the following:

1. That the transcript of this trial will be approximately one thousand pages, of which five hundred pages have been transcribed.

2. That three other transcripts which were due on March 7, March 8 and March 10 have been filed by this reporter and this reporter has two other

transcripts pending, one being due the 25th of March and the other due the 29th of March.

3. That the trial judge has knowledge of the additional time needed to prepare this transcript and has approved such extension.

4. It is anticipated that the present transcript can be filed with the trial court clerk on or before ____________________, __________.

This the ______ day of ____________________, __________.

____

MERRY REPORTER
Official Court Reporter

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UNIFORM RULES OF CIRCUIT AND COUNTY COURT PRACTICE

Adopted Effective May 1, 1995; Amended Effective July 1, 2017

Rule

1.01. Designation of rule name and proper citation.
1.02. Court decorum.
1.03. Sanctions.
1.04. Cameras.
1.05. Information on each pleading and motion.
1.05A. Assignment of cases.
1.06. Corporations must be represented by counsel.
1.07. Signing of bonds by officer of court.
1.08. Substitution of copies.
1.09. County court use of chancery court rules.
1.10. Earwigging prohibited.
1.11. Presentation of orders to the court.
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4.06. Rule for Jones, Lee and Rankin Counties Expedited Small Claims. [Omitted].
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5.04. Notice of appeal.
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Editor's Note — On December 15, 2016, the Supreme Court of Mississippi approved the addition of a new body of rules, the Mississippi Rules of Criminal Procedure, which altered, duplicated, supplemented or replaced certain provisions of the Uniform Rules of Circuit and County Court and the Uniform Rules of Procedure for Justice Court.

"The Mississippi Rules of Criminal Procedure are designed to provide comprehensive and uniform practice and procedure for criminal proceedings in all Mississippi trial courts, including justice courts, municipal courts, county courts, and circuit courts, except as otherwise provided. They replace practice under formerly applicable provisions of the Uniform Rules of Circuit and County Court and the Uniform Rules of Procedure for Justice Court." Comment to Mississippi Rules of Criminal Procedure, Rule 1.1.

The Uniform Rules of Circuit and County Court and Uniform Rules of Procedure for Justice Court have been significantly amended to conform to the addition of the Rules of Criminal Procedure, effective July 1, 2017.

Cross References — Circuit Courts, see Mississippi Code of 1972 § 9-7-1 et seq.

County Courts, see Mississippi Code of 1972 § 9-9-1 et seq.

Practice and Procedure in Circuit Courts, see Mississippi Code of 1972 § 11-7-1 et seq.

Practice and Procedure in County Courts, see Mississippi Code of 1972 § 11-9-1 et seq.

Rule 1.01. Designation of rule name and proper citation.

These rules are the Uniform Rules of Circuit and County Court and may be cited as "URCCC __.___." The word "court" shall mean both circuit and county court unless otherwise indicated. (Amended effective July 1, 2017.)

Rule 1.02. Court decorum.

The court shall be opened formally and conducted with dignity and decorum at all times. The judge shall wear a judicial robe at all times when presiding in open court. The wearing of a robe is discretionary where court facilities make it infeasible. Each officer of the court shall be responsible for the promotion of respect for the court.

Rule 1.03. Sanctions.

Any person embraced within these rules who violates the provisions hereof may be subjected to sanctions, contempt proceedings or other disciplinary actions imposed or initiated by the court.

JUDICIAL DECISIONS

Dismissal.

Dismissal with prejudice of all of plaintiff's claims against a competitor was proper due to sufficient evidence that plaintiff knew that there were improper ex parte communications with a judge on its behalf in order to advance its interest in the lawsuit, arising from former employees' involvement with the competitor. Eaton Corp. v. Frisby, 133 So. 3d 735 (Miss. 2013).

Rule 1.04. Cameras.

There shall be no broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that the court may authorize the same in accordance with the Code of Judicial Conduct.

COMMENT

Section 3B(12) of the Code of Judicial Conduct prohibits broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto except as authorized by rule or order of the Supreme Court. The Supreme Court has now adopted the Rules for Electronic and Photographic Coverage of Judicial Proceedings which provides detailed guidance for such coverage. (Adopted effective April 17, 2003 as to proceedings conducted from and after July 1, 2003.)

JUDICIAL DECISIONS

Electronic and photographic coverage of judicial proceedings.

Miss. Code Jud. Conduct Canon 3B(12) prohibited broadcasting, televising, recording, or taking photographs in a courtroom and areas immediately adjacent thereto except as authorized by rule or order of the Mississippi Supreme Court; and the Supreme Court had adopted the "Rules for Electronic and Photographic Coverage of Judicial Proceedings" which provided detailed guidance for such coverage. In re Unif. Rules of Circuit & County Courts, — So. 2d —, 2003 Miss. LEXIS 189 (Miss. Apr. 11, 2003).

Rule 1.05. Information on each pleading and motion.

All pleadings, motions, or other applications to the court shall bear the name, address, and office phone number of the attorney who will try the case and, if different from the attorney who will try the case, the name, address, and office phone number of the attorney who will be prepared to argue the pleading, motion or other application.

Rule 1.05A. Assignment of cases.

A. In multi-judge districts and courts, all civil cases shall be assigned immediately on the filing of the complaint by such method which shall insure that the assignment shall be random, that no discernable pattern of assignment exists, and that no person shall know to whom the case will be assigned until it has been assigned. If an attorney or party shall attempt to manipulate or defeat the purpose of this rule, the case shall be reassigned to the judge who would have otherwise received the assignment. If the judge who would have received the case under an assignment in compliance with this rule cannot be determined, a new assignment in compliance with the rule shall be made, excluding the judge to whom it was incorrectly assigned. Sanctions, including costs and attorney's fees, may be imposed by that judge on reassignment. Such sanctions may also include suspension from practice in the court imposing them for not more than 30 days and referral to the Bar for further discipline.

B. Decisions regarding this rule shall be subject to review by the Supreme Court under M.R.A.P. 21, and appropriate stays shall be entered by the trial court to allow such review.

C. In districts where motion days are set in advance with judges specifically assigned, preliminary procedural matters may be submitted to the judge assigned such duties, notwithstanding the fact that the case has been assigned to another judge. Furthermore, by local rule approved by the Supreme Court, the trial court may make special provisions accommodating local needs of economy and efficiency which might otherwise be at variance with this rule. (Adopted effective May 29, 2003.)

COMMENT

In 2002 the Legislature adopted Miss. Code Ann. § 11-1-56, which required civil case assignments to be delayed until one defendant has filed responsive pleadings. By the adoption of this rule, the Supreme Court has superceded Section 11-1-56, exercising its inherent authority to adopt rules of practice, procedure and evidence to promote justice, uniformity, and the efficiency of the courts, as articulated in *Newell v. State*, 308 So. 2d 71 (Miss. 1975) and *Hall v. State*, 539 So. 2d 1338 (Miss. 1989).

The purpose of this rule is to prevent "judge shopping" within a district or a court. Although voluntary dismissal is allowed under M.R.C.P. 41 at any time prior to service by the adverse party of an answer or summary judgment, when a civil case is so dismissed and then refiled immediately thereafter with no substantial change in the parties or claims, such practice, as an example, may be taken as a wilful violation of this rule. Wilful violation of this rule may constitute an offense subject to suspension and other discipline under Rule 3.4(c) of the Rules of Professional Conduct. Sanctions authorized by this rule are cumulative to discipline under the Rules of Professional Conduct.

The assignment of cases by regular rotation among the judges of the district is not a random assignment as contemplated by this rule since a regular rotation will allow those attentive to the docket to predict the judge who will receive a particular assignment.

A party who believes that a case has been assigned in violation of this rule will first submit the issue to the judge before whom the case is pending; thereafter, either party aggrieved by the judge's decision on the issue may seek review of that decision by this Court under the provisions of M.R.A.P. 21.

In some districts, local modifications, which to some degree are at variance with the strict provisions of this rule, may be made while fulfilling the policy of the rule. These modifications are to be made by local rule, on petition of the local district under M.R.C.P 83 to the Supreme Court. The order by which this Rule 1.05A was adopted provides:

It is further ordered that this new rule shall be effective upon issuance of this order; however, local practices adopted for the purpose of accommodating the needs of economy and efficiency may be continued for a period of forty-five days from the issuance of this order, and in districts wherein the judges of the district have within such period petitioned the Court under M.R.C.P. 83 for local rules seeking approval of such practices or of other practices which might otherwise be in variance to this rule, the practices may continue to be used until the Supreme Court has considered the petition. (Comment adopted effective May 29, 2003.)

JUDICIAL DECISIONS

Sanctions.

Creditor was entitled to a nondischargeable judgment under 11 USCS § 523(a)(6) because a state court sanctions award in favor of the creditor for the debtor's violation of Miss. Unif. Cir. & Cty. R. 1.05A, which was entitled to preclusive effect, established that the debtor acted willfully and maliciously to injure the creditor. State Farm Mut. Auto. Ins. Co. v. Gatlin (In re Gatlin), — Bankr. —, 2013 Bankr. LEXIS 2108 (Bankr. S.D. Miss. May 22, 2013).

Rule 1.06. Corporations must be represented by counsel.

All corporations that are party plaintiffs must be represented by an attorney licensed to practice law in this state, whose name must appear on the pleading prior to the filing of the pleading.

Rule 1.07. Signing of bonds by officer of court.

No officer of the court shall sign any bond of any kind in or to any court of this state.

Rule 1.08. Substitution of copies.

Substitution of a copy for an original exhibit will be permitted only after verification of the copy by the court reporter and permission of the judge.

Rule 1.09. County court use of chancery court rules.

In cases which have been assigned by the chancery court to the county court, the county court shall use the Uniform Rules of Chancery Court Practice.

Rule 1.10. Earwigging prohibited.

No person shall undertake to discuss with or in the presence or hearing of the judge the law or the facts or alleged facts of any case then pending in the court or likely to be instituted therein, except in the orderly progress of the trial, and arguments or briefs connected therewith; nor attempt in any manner, except as stated above, to influence the decision of the judge in any such case or matter.

JUDICIAL DECISIONS

Dismissal.
Recusal.

Dismissal.

Dismissal with prejudice of all of plaintiff's claims against a competitor was proper due to sufficient evidence that plaintiff knew that there were improper ex parte communications with a judge on its behalf in order to advance its interest in the lawsuit, arising from former employees' involvement with the competitor. Eaton Corp. v. Frisby, 133 So. 3d 735 (Miss. 2013).

Recusal.

Circuit judge did not abuse his discretion in denying defendant's motion for recusal because defendant made no showing that the judge engaged in any improper ex parte communications or "earwigging" or that he had any personal knowledge of the disputed facts of defendant's case prior to trial; the communications at issue did not violate Miss. Unif. Cir. & Cty. R. 1.10 and were not improper. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

Rule 1.11. Presentation of orders to the court.

With the exception of default or agreed orders and judgments, all proposed orders and judgments to be signed by the court shall be submitted directly to the court by an attorney and not through the clerk or through correspondence, unless otherwise permitted by the court. All orders or judgments presented to the court shall be signed by the attorney presenting the same.

JUDICIAL DECISIONS

In general.

Chancellor should have recused because the chancellor cited the constructive criminal contempt; the chancellor stated that the State Auditor's alleged contempt was civil, but the alleged acts constituted constructive criminal contempt since they were committed outside the presence of the court, and any noncompliance with the chancellor's bench ruling or protective order was not willful or contemptuous. Miss. Dep't of Audit v. Gulf Publ. Co., 235 So. 3d 1452 (Miss. Ct. App. 2016), reversed in part by, vacated in part by, remanded in part by 236 So. 3d 32, 2017 Miss. LEXIS 437, 2017 WL 5505112 (Miss. Nov. 16, 2017).

Chancellor did not abuse his discretion in failing to recuse himself because an attorney failed to file an affidavit with his motion to recuse, as required by URCCC 1.11, failed to obtain a ruling from the chancery court on his motion to stay the proceedings, and failed to appeal the denial of his recusal motion through an interlocutory appeal to the supreme court. In re Guardianship of McClinton, 157 So. 3d 862 (Miss. Ct. App. 2015).

Chancellor did not abuse his discretion in failing to recuse himself because there was no factual basis to conclude that his impartiality could be questioned by a reasonable person knowing all the circumstances. In re Guardianship of McClinton, 157 So. 3d 862 (Miss. Ct. App. 2015).

Rule 1.12. Removal of records from the office of the clerk.

No record, or any part of a file of court papers, shall be taken from the clerk's custody without a written order from the judge to the clerk. The clerk shall keep a register of all files checked out by permission of the court and the same shall be redelivered to the clerk on the day provided for in the order from the judge, or, if none is provided, before the opening of the next term.

Rule 1.13. Withdrawal of counsel from a case.

When an attorney makes an appearance for any party in a case, that attorney will not be allowed to withdraw as attorney for the party without the permission of the court. The attorney making the request shall give notice to his/her client and to all attorneys in the cause and certify the same to the court in writing. The court shall not permit withdrawal without prior notice to his/her client and all attorneys of record.

JUDICIAL DECISIONS

Contempt.

Trial court properly held an attorney in direct criminal contempt because he refused to represent his client at his trial scheduled that day, despite not being granted permission to withdraw; even if the attorney believed he had good cause to terminate his representation, he still had to obtain the trial court's permission in order to withdraw, and once denied permission, he could not simply ignore the order because he believed the judge was wrong. Harris v. State, 224 So. 3d 76 (Miss. 2017).

Rule 1.14. Local practice.

Attorneys having cases or practicing before a court shall contact the clerk of the court to ascertain the practices of the local courts. There will be no local rules of court unless such rules are approved by the Supreme Court of Mississippi.

JUDICIAL DECISIONS

Improper promulgation.

Summary judgment for defendant in medical malpractice case was properly reversed, where parties' affidavits raised triable questions of fact which, but for the imposition of an improperly promulgated local rule governing summary judgment, would have resulted in a jury trial. Koerner v. Crittenden, 635 So. 2d 833 (Miss. 1994).

Rule 1.15. Motions for recusal of judges.

Any party may move for the recusal of a judge of the circuit or county court if it appears that the judge's impartially might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B. (Adopted April 4, 2002.)

JUDICIAL DECISIONS

Failure to recuse.
Recusal not required.

Failure to recuse.

Any argument that the circuit court judge should have been recused was waived because appellant never requested the circuit judge recuse himself from the probation revocation hearing; because appellant never raised the issue of recusal before the circuit court, he consented to have the judge preside over the revocation hearing. Walker v. State, 230 So. 3d 709 (Miss. Ct. App. 2016), affirmed in part and reversed in part by 230 So. 3d 703, 2017 Miss. LEXIS 387, 2017 WL 4247962 (Miss. Sept. 21, 2017).

Circuit court judge did not err in failing to recuse himself because defendant failed to to provide sufficient evidence to raise a reasonable doubt as to the circuit court judge's impartiality. Haskins v. State, 159 So. 3d 1222 (Miss. Ct. App. 2015).

Judge was publicly reprimanded, fined, and assessed costs of the proceeding because the judge, among other things, mentioned to counsel in chambers, but did not make a disclosure on the record, that his father might have been tested for asbestosis, failed to disclose the history of his parent's asbestosis claims, and the settlement between the judge's father and one of the parties, and failed to rule on counsel's motion to recuse made after the conflict was discovered. Miss. Comm'n on Judicial Performance v. Bowen, 123 So. 3d 381 (Miss. 2013).

Recusal not required.

Motion to recuse was filed two years after the motion to dismiss and the recusal motion was thus not timely filed and was waived; notwithstanding the waiver, defendant had not pointed to any specific rulings that indicated that the judge was biased or unqualified to rule on his motions. Donaldson v. State, 262 So. 3d 1135 (Miss. Ct. App. 2018), writ of certiorari denied by 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. Jan. 31, 2019).

Defendant's motion for recusal of a second judge was not timely filed and was waived; notwithstanding the waiver, defendant had not pointed to any specific rulings indicating that the judge was biased or unqualified to rule on his motions. Donaldson v. State, 262 So. 3d 1135 (Miss. Ct. App. 2018), writ of certiorari denied by 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. Jan. 31, 2019).

Recusal of judge who had previously prosecuted defendant was not required because the judge was in no way involved in defendant's current prosecution. Johnson v. State, 194 So. 3d 191 (Miss. Ct. App. 2016).

Because defendant failed to raise the issue of recusal prior to his appeal, his untimely objection on appeal to the court of appeals was barred; defendant failed to object to the circuit court judge or to file a motion asking the circuit court judge to recuse himself. Haskins v. State, 159 So. 3d 1222 (Miss. Ct. App. 2015).

Trial court properly denied a tenant's motion to recuse the judge because her motion was not timely filed where the source of the alleged friction between the tenant's counsel and the judge occurred a year before the case assignment, counsel waited until he received the ruling on the summary-judgment motion before filing the motion to recuse, and the motion did not raise a reasonable doubt as to the judge's impartiality. Bennett v. Highland

Park Apts., LLC, 170 So. 3d 522 (Miss. Ct. App. 2014), writ of certiorari dismissed by 154 So. 3d 33, 2015 Miss. LEXIS 42, 2015 WL 467473 (Miss. Jan. 22, 2015), affirmed by, remanded by 170 So. 3d 450, 2015 Miss. LEXIS 216 (Miss. May 7, 2015).

Circuit judge did not abuse his discretion in denying defendant's motion for recusal because defendant pointed to nothing in the record to support his claim that the judge's impartiality had to be questioned or that the judge was prejudiced against him. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

In a case in which defendant was convicted of violating Miss. Code Ann, § 47-5-193, his argument that the trial judge should have recused himself after speaking to the potential jurors was procedurally barred on appeal since he failed to object or file a motion seeking the trial judge to recuse himself. Lindsey v. State, 29 So. 3d 121 (Miss. Ct. App. 2010).

Trial court did not abuse its discretion in denying plaintiff's motion for recusal where plaintiff failed to produce any evidence regarding either allegation of impropriety; plaintiff produced no evidence that the court administrator had any material input into the court's judicial decisions. Hill v. Mills, 26 So. 3d 322 (Miss. 2010).

Not only was property owner's appeal of his motion to recuse a county court judge failed to abide by the requirements of Miss. R. App. P. 48B because it was improperly filed with the county court clerk, instead of with the Supreme Court of Mississippi and it did not contain a transcript of the recusal proceedings, but his motion for recusal did not abide by the requirement of Miss. Unif. Cir. & Cty. R. 1.15 because it was not filed with the appropriate affidavit and was untimely. Furthermore, county court judge did not have to recuse himself under Miss. Code Jud. Conduct Canon 3(E)(1) or Miss. Unif. Cir. & Cty. R. 1.15 because not only was the county court judge's prior knowledge merely from presiding over the case in open court, not from any sort of improper ex parte prior knowledge, but the owner's case was dismissed based on the statute of limitations, which did not require the county court judge to interpret his prior order. Whitley v. City of Pearl, 994 So. 2d 857 (Miss. Ct. App. 2008).

In a case alleging tortious interference with business relations, there was no error based on a trial judge's failure to recuse himself under Miss. Unif. Cir. & County Ct. Prac. R. 1.15 because the owners failed to raise the issue of alleged impartiality at the trial court level; the owners' website showed that they knew of a grounds for recusal at the time of trial, and even if the owners had not been able to raise this issue before the trial judge, a reversal would still not have been granted because the judge was not connected to the objectors by affinity or consanguinity, and he had no interest in the outcome of the case based on vague allegations that the judge had eaten at the owners' lodge. Bateman v. Gray, 963 So. 2d 1284 (Miss. Ct. App. 2007).

Trial judge did not abuse his discretion in refusing to recuse himself in an individual's action asserting false imprisonment and negligence claims against the sheriff, county, and surety where the fact that circuit court judges dealt with the sheriff and county and were elected by the taxpayers of the county were insufficient to raise an appearance of impropriety. Brooks v. Pennington, 995 So. 2d 733 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2008 Miss. LEXIS 680 (Miss. Dec. 4, 2008).

Trial judge was not required to disqualify himself under Miss. Const. art. VI, § 165, Miss. Code Ann. § 9-1-11, or Miss. Unif. Cir. & County Ct. Prac. R. 1.15 where there was no evidence that the trial judge was connected with the parties through marriage or blood and there was no evidence that the judge may have had an interest in the outcome of the proceeding, or that he was otherwise precluded by the statute; it was only in causes wherein the judge may have been of counsel that provided for disqualification. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844 (Miss. 2005).

Rule 1.16. Electronic filing and service procedures.

A court may, by local rule, allow pleadings and other papers to be served, filed, signed, or verified by electronic means in conformity with the Mississippi Electronic Court System procedures. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules. Please refer to the Administrative Procedures for Mississippi Electronic Court System on the Supreme Court's website at www.mssc.state.ms.us (Adopted effective January 8, 2009, for purposes of a pilot program for the Mississippi Electronic Court System.)

Rule 2.01. Subpoenas.

The procedures for subpoenas shall conform to Rule 45 of the Mississippi Rules of Civil Procedure. (Adopted effective May 1, 1995; amended April 18, 2002; amended July 1, 2017.)

JUDICIAL DECISIONS

Leave of court.
Motion to quash.

Leave of court.

Because defendant failed to obtain the court's leave, he failed to follow the appropriate court procedure for the issuance of his subpoenas. Caissie v. State, 254 So. 3d 849 (Miss. Ct. App. 2018), writ of certiorari denied by 254 So. 3d 170, 2018 Miss. LEXIS 410 (Miss. Oct. 11, 2018).

Motion to quash.

Circuit court did not err in quashing subpoenas defendant issued to the Commissioners of the Mississippi Department of Revenue and the Mississippi Department of Public Safety because no evidence existed to show that the Commissioners possessed personal knowledge or relevant testimony related to defendant's traffic tickets. Caissie v. State, 254 So. 3d 849 (Miss. Ct. App. 2018), writ of certiorari denied by 254 So. 3d 170, 2018 Miss. LEXIS 410 (Miss. Oct. 11, 2018).

Trial court did not err when it granted the prosecution's motion to quash the subpoena duces tecum that he had served on a witness where it commanded the witness to appear a defense counsel's office and produce insurance policies but the trial court had not entered an order authorizing the subpoena duces tecum. Gray v. State, 202 So. 3d 243 (Miss. Ct. App. 2015).

Rule 2.02. Scope of authority of court.

The court is empowered to hear and determine all motions, appeals or other applications to the court, which the court may hear and determine without a jury, in term or vacation, and may hear or determine the same in any county in the judicial district of the court, or in a county to which venue has been transferred.

JUDICIAL DECISIONS

Justice court order.

In defendant's trial on charges of telephone harassment, a violation of Miss. Code Ann. § 97-29-45(1)(a), the trial court did not err in admitting the phone records of defendant's girlfriend that were obtained pursuant to a justice court order because the records were obtained during the investigative process before defendant was charged; defendant had no standing to challenge the acquisition of the phone records because the phone was not his; defendant had notice and thus was not surprised by the use of the records, and defendant failed to cite any authority to support his claim that the justice court had no authority to order production of telephone records under Miss. Unif. Cir. & County Ct. Prac. R. 2.02. Yates v. State, 919 So. 2d 1122 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 71 (Miss. 2006).

Rule 2.03. Rescheduling trials.

No case set for trial shall be continued or rescheduled for trial except by permission of the court.

Rule 2.04. Duties of movant.

It is the duty of the movant, when a motion or other pleading is filed, including motions for a new trial, to pursue said motion to hearing and decision by the court. Failure to pursue a pretrial motion to hearing and decision before trial is deemed an abandonment of that motion; however, said motion may be heard after the commencement of trial in the discretion of the court.

JUDICIAL DECISIONS

Abandoned motion.
Post-conviction relief.
Waiver.

Abandoned motion.

There was no requirement that retained counsel pursue defendant's pending pro se motions. The duty to pursue the pro se motions was on defendant, not defendant's attorney or the trial court. Ryan v. State, 245 So. 3d 491 (Miss. Ct. App. 2017).

Because a football player failed to obtain a ruling on his motion to compel discovery, he abandoned his discovery argument. Ramsey v. Auburn Univ., 191 So. 3d 102 (Miss. 2016).

Because a claimant failed to pursue the claimant's motion to supplement the record to a hearing and decision by the court, in accordance with Miss. Unif. Cir. & Cty. R. 2.04, the claimant's motion was abandoned. Kent v. Miss. Dep't of Empl. Sec., 135 So. 3d 230 (Miss. Ct. App. 2014).

Because the motion for appointment of a psychiatrist to conduct a psychiatric evaluation was never pursued to a decision, the matter was procedurally barred. Trammell v. State, 62 So. 3d 424 (Miss. Ct. App. 2011).

Motion for travel expenses for two of defendant's witnesses was procedurally barred because she did not pursue her motion to a hearing and a ruling by the trial court where she did not even present her motion for payment of travel expenses to the trial court. Chamberlin v. State, 989 So. 2d 320 (Miss. 2008), writ of certiorari denied by 555 U.S. 1106, 129 S. Ct. 908, 173 L. Ed. 2d 122, 2009 U.S. LEXIS 495, 77 U.S.L.W. 3397 (2009).

Grant of summary judgment in favor of the company in a wrongful death action was proper where products liability law limited itself to imposing liability on entities engaged in the actual production or sale of goods, Miss. Code Ann. § 11-1-63(a); further, the beneficiaries abandoned their motion for leave to amend because they permitted over three and on-half months to pass without making any effort to pursue a ruling on the motion in face of knowledge that the trial court had taken the summary judgment motion filed against them under advisement, Miss. Unif. Cir. & County Ct. Prac. R. 4.03(1), 2.04. Harrison v. B.F. Goodrich Co., 881 So. 2d 288 (Miss. Ct. App. 2004), writ of certiorari denied by 882 So. 2d 772, 2004 Miss. LEXIS 1111 (Miss. 2004).

Trial court did not abuse its discretion in refusing to hear a motion to suppress filed April 30, 2004, because it was based on the identical grounds contained in the motion which was scheduled to be heard on July 8, 2003, but which was not heard because counsel failed to appear; under Miss. Unif. Cir. & County Ct. Prac. R. 2.04, failure to pursue a motion to decision was deemed an abandonment of the motion. Turner v. State, 945 So. 2d 992 (Miss. Ct. App. 2007).

Post-conviction relief.

Defendant's conviction for aggravated assault was appropriate because his contention that the trial court erred in failing to grant his motion for a directed verdict was procedurally barred under Miss. Unif. Cir. & County Ct. Prac. R. 2.04 since the record did not reflect that the trial court had ruled on the motion; however, even if it was not procedurally barred, the evidence was sufficient to support the finding that the victim was not the aggressor. Hawthorne v. State, 944 So. 2d 928 (Miss. Ct. App. 2006).

Inmate argued that he was prevented from appealing the denial of his second motion for post-conviction relief; however, the inmate did not pursue the motion to a decision by the trial court as required by Miss. Unif. Cir. & County Ct. Prac. R. 2.04. Thus, no action was taken by the trial, and therefore, there was no ruling from which the inmate could appeal to the appellate court. Runnels v. State, 919 So. 2d 1072 (Miss. Ct. App. 2005).

The rule does not apply to cause a lapse or abandonment of a motion for post-conviction relief and, therefore, a circuit judge had jurisdiction to enter an order denying such relief six years after the motion was filed. Berryman v. State, 734 So. 2d 292 (Miss. Ct. App. 1999).

Waiver.

Appellate court found no record of a ruling by the trial court on defendant's motion for severance nor any evidence that the motion was noticed for hearing by defendant; by failing to pursue a hearing or ruling on the motion from the trial court, defendant effectively abandoned the motion and waived this issue for appeal. Smith v. State, 986 So. 2d 290 (Miss. 2008).

In a capital murder case, the trial judge did not err in declining to rule on defendant's pretrial motion to suppress a pistol, the alleged murder weapon, because defendant failed to request a ruling on the motion at an appropriate time; the trial court expressly noted that it had provided a time to hear pretrial motions and that conducting an evidentiary hearing on the pistol was inconvenient since the venire members had been convened and were waiting outside the courtroom. Ross v. State, 954 So. 2d 968 (Miss. 2007).

Defendant failed to pursue his motion to dismiss his trial counsel as required by Miss. Unif. Cir. & County Ct. Prac. R. 2.04, and his motion was deemed abandoned; the trial court did not have a responsibility to pursue the motion as there was no abdication by trial counsel, nor was there a meaningful basis for charging counsel with any deficiency in his representation of defendant. Roy v. State, 878 So. 2d 84 (Miss. Ct. App. 2003), writ of certiorari denied by 878 So. 2d 67, 2004 Miss. LEXIS 911 (Miss. 2004).

Rule 2.05. Trial briefs.

Unless otherwise directed by the court, the submission of a trial brief on the merits of a case or particular issues is within the discretion of the parties. A copy of any such brief submitted shall be simultaneously served upon opposing attorneys. No memorandum or brief required or permitted by this rule shall be filed with the clerk. Memorandum or briefs shall not exceed 25 pages in length and shall be accompanied by copies of all authorities cited therein.

Rule 2.06. Service of copies and certificate of service.

Unless otherwise ordered by the court, all pleadings, motions, or applications to the court, except the initial pleading, must be served by any form of service authorized by Rule 5 of the Mississippi Rules of Civil Procedure on all attorneys of record for the parties, or on the parties when not represented by an attorney, and the person filing the same shall also file an original certificate of service certifying that a correct copy has been provided to the attorneys or to the parties, the manner of service, and to whom it was served. Except as allowed by this rule or allowed by the court for good cause shown, the clerk may not accept for filing any document which is not accompanied by a certificate of service. (Amended effective July 1, 2017.)

JUDICIAL DECISIONS

Harmless error.
Service of amended indictment.

Harmless error.

Although an amendment to the indictment of the defendant for capital murder may not have been correctly made in terms of procedure, it did not place the defendant in any worse position than before the amendment was made, as the indictment was amended only to include additional prior felony convictions with regard to the defendant's status as a habitual offender, and, therefore, any error was harmless. Mitchell v. State, 792 So. 2d 192 (Miss. 2001), writ of certiorari denied by 535 U.S. 933, 122 S. Ct. 1308, 152 L. Ed. 2d 218, 2002 U.S. LEXIS 1623, 70 U.S.L.W. 3577 (2002).

Service of amended indictment.

There was no error in the state serving the inmate's counsel with the motion to amend the indictment under Miss. Unif. Cir. & County Ct. Prac. R. 7.09; the inmate was represented by counsel and this was not the initial pleading or indictment, and thus it was proper for counsel to be served in the inmate's place under Miss. Unif. Cir. & County Ct. Prac. R. 2.06. Sneed v. State, 990 So. 2d 226 (Miss. Ct. App. 2008), writ of certiorari denied en banc by 994 So. 2d 186, 2008 Miss. LEXIS 468 (Miss. 2008).

Rule 2.07. Habeas corpus in preconviction and extradition matters.

A. *Habeas corpus in cases other than post-conviction and extradition.*

1. The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his/her liberty, or by which rightful custody of the person is withheld from the person entitled thereto.

2. If the person for which habeas relief is sought is charged with a crime in this state for which the accused may be imprisoned or confined to jail, and the accused is indigent and makes an affidavit of indigence, then the court shall appoint an attorney, if one has not already been appointed. The court may appoint an attorney for an indigent seeking relief hereunder even though the indigent has not been formally charged with a crime in this state.

3. The proceedings and judgments shall in all cases be entered on record.

4. The motion for the writ of habeas corpus shall be in writing, sworn to and signed by the person for whose relief it is intended, or by someone on his/her behalf, and shall contain the following matters:

a. A description of where and by whom the movant is deprived of his/her liberty;

b. The facts and circumstances of the restraint;

c. The form of the relief sought;

d. The grounds upon which relief is sought; and

e. If desired, a request for a copy of transcripts of any prior proceeding if the movant qualifies as an indigent under § 99-15-15 of the Mississippi Code of

1972, specifying what portions are necessary to decide the issues, and why they are necessary.

5. The motion for writ of habeas corpus shall be filed with the clerk of any court of competent jurisdiction of the county where the movant is detained. The proper respondent and, in cases where the person for whom habeas relief is sought is charged with a crime, the prosecuting attorney must receive three (3) days written notice, with a copy of the motion attached, prior to any hearing or consideration by the court. Such three (3) day notice may be waived for grounds sufficiently urgent and necessary to due process and the grounds therefore shall be found by the court and made a part of the record. If no court has entertained any proceeding on the movant's matter, excepting bond, the motion for habeas corpus shall be filed with the clerk of the circuit court in the county in which the movant is detained.

6. The court shall give preliminary consideration of the motion for the writ of habeas corpus as follows:

a. The motion shall be examined promptly by the judge of the court in which the motion is filed.

b. If the motion, upon examination, does not substantially comply with the requirements of this rule, it need not be entertained on its merits and the clerk shall so notify the movant.

c. If, from the showing made by the motion, it is manifest that the person on whose behalf it is presented is not entitled to any relief, the court can refuse to grant the writ and enter an appropriate order.

d. Upon granting the writ, the court shall order the respondent to file an answer within a reasonable time and in an appropriate court.

e. Upon granting the writ, the court shall also order the respondent to bring or cause to bring the person for whom habeas relief is sought before the court at the time and place of the hearing on the writ.

f. If the movant requests transcripts of any prior proceeding and the movant qualifies as an indigent as under § 99-15-15 of the Mississippi Code of 1972, the judge shall order the portions of the transcripts the court deems necessary to the issues to be made available to the movant within a reasonable time before the date of the hearing on the writ.

7. The respondent upon whom the writ of habeas corpus is served shall file a response in writing. The response shall be filed by the date and in the court designated in the writ of habeas corpus and a copy served as provided in these rules. The response must respond to all the allegations of the motion including the following matters:

a. Whether the respondent has or has not the person in custody or power or restraint.

b. If the respondent does have the movant in custody or power or restraint, the respondent shall state the authority and cause of the restraint.

c. If the movant is restrained by virtue of any writ, warrant, or other written authority a copy of such shall be attached to the answer.

d. If the respondent has had the movant in restraint at any time prior to or subsequent to the date on the writ of habeas corpus, but such person has escaped or been transferred to the custody of another, a description of the escape or if transfer, the time, place, for what cause, and by what authority such transfer took place.

8. A party shall be entitled to invoke the processes of discovery available under the Mississippi Rules of Civil Procedure, if and to the extent that the court, in the exercise of its discretion and for good cause shown, grants leave to do so, but not otherwise.

9. Upon a hearing of the matter:

a. The court shall either discharge, or commit, or admit to bail, or remand the movant or award custody to the party entitled thereto as the law and the evidence shall require. The court may make any temporary order in the cause during the progress of the proceeding that justice may require.

b. The order rendered by the court shall be conclusive until reversed and shall be a bar to another writ of habeas corpus in the same cause, except by appeal or civil action for false imprisonment.

B. *Habeas corpus in extradition matters.*

1. The motion for the writ of habeas corpus in extradition matters shall be in writing, sworn to and signed by the person for whose relief it is intended, or by someone in his/her behalf, and shall contain the following matters:

a. A description of where and by whom the movant is deprived of liberty;

b. The facts and circumstances of the restraint;

c. The form of the relief sought; and

d. The grounds upon which relief is sought, which is limited to those areas specified in subsection six (6) below.

2. Upon issuance of the rendition warrant by the proper authorities of the State of Mississippi, the person detained thereunder shall not be entitled to bond.

3. If no court has entertained any proceeding on the movant's matter, excepting bond or the denial of bond, the motion for habeas corpus shall be filed with the clerk of the circuit court in the county in which the movant is detained.

4. The court shall give preliminary consideration of the motion for the writ of habeas corpus as follows:

a. The motion shall be examined promptly by the judge of the court in which the motion is filed.

b. If the motion, upon examination, does not substantially comply with the requirements of this rule, it need not be entertained on its merits and the clerk shall so notify the movant.

c. If, from the showing made by the motion, it is manifest that the person whom, or on whose behalf, it is presented is not entitled to any relief, the court can refuse to grant the writ and enter an appropriate order.

d. Upon granting the writ the court shall order the respondent to file an answer within a reasonable time and in an appropriate court.

e. Upon granting the writ the court shall also order the respondent to bring or cause to bring the movant before the court at the time and place of the hearing on the writ.

f. The Attorney General of Mississippi must receive three days written notice, with a copy of the motion for habeas corpus attached, prior to any hearing or consideration by the court.

5. The respondent upon whom the writ of habeas corpus is served shall file a response in writing. The response shall be filed by the date and in the court designated in the writ of habeas corpus and a copy served as provided in these rules. The response must respond to all the allegations of the motion including the following matters:

a. Whether the respondent has or has not the movant in custody or power or restraint.

b. If the respondent does have the movant in custody or power or restraint, the respondent shall state the authority and cause of the restraint.

c. If the movant is restrained by virtue of any writ, warrant, or other written authority a copy of such shall be attached to the answer.

d. If the respondent has had the movant in restraint at any time prior to or subsequent to the date on the writ of habeas corpus, but such person has escaped or been transferred to the custody of another, a description of the escape or if transfer, the time, place, for what cause, and by what authority such transfer took place.

6. The hearing before the court shall be a limited hearing and the court may inquire only into:

a. Whether the extradition documents on their face are in order;

b. Whether the movant for habeas relief has been charged with a crime in the demanding state;

c. Whether the movant is the person named in the request for extradition; and

d. Whether the movant for habeas relief is a fugitive.

The introduction into evidence of the rendition warrant issued by the proper official of the State of Mississippi creates a presumption that all the requirements for extradition have been met and constitutes a prima facie case for the state.

7. Extradition is a civil matter and does not entitle the subject of extradition to a court appointed attorney if the subject is indigent.

JUDICIAL DECISIONS

Hearing.

Circuit court was not required to hold an evidentiary hearing before denying appellant's petition for a writ of habeas corpus because no writ of habeas corpus was granted; neither the statutes nor the Uniform Rules of Circuit and County Court Practice mandate a hearing upon every petition for a writ of habeas corpus, but instead, both contemplate scenarios where the petition would be summarily dismissed on its face. Johnson v. State, 159 So. 3d 601 (Miss. Ct. App. 2014).

Rule 3.01. Prompt attendance and informing court of presence of expert witness.

Every person whose presence is required for the conduct of the business of the court shall be prompt in attendance. Any attorney or party who subpoenas an expert witness to testify shall inform the court of the presence of such witness at the time of such witness' initial appearance. (Amended effective July 1, 2017.)

Rule 3.02. Conduct of attorneys.

Attorneys should manifest an attitude of professional respect toward the judge, the opposing attorney, witnesses, defendants, jurors, and others in the courtroom. In the courtroom, attorneys should not engage in behavior or tactics purposely calculated to irritate or annoy the opposing attorney and shall address the court, not the opposing attorney, on all matters relating to the case.

All objections to testimony must be made to the judge and not to the opposing attorney. The objection must be specific and not general. The attorneys will not be permitted to argue between themselves. Attorneys must stand when addressing the court, examining witnesses, and addressing the jury, except when excused for good cause by the court. Attorneys may direct remarks to the jury panel only during voir dire, opening and closing statements.

Attorneys must limit themselves to asking questions and must refrain from making statements, quips, or side remarks in an examination of a witness. The examination of witnesses will be conducted fairly and objectively, with the attorneys and witnesses displaying respect and courtesy to each other. The attorneys may not ask questions merely to embarrass or humiliate the witness. No more than one attorney per party shall be allowed to examine a witness.

In opening statements, and in closing arguments, the attorneys may not attack the opposing attorney. The attorneys may not call any juror by name, or have any personal contact with the jury whatsoever, nor attempt to converse with or solicit audible answers from the jurors individually. In the argument to the jury, the attorneys will be required to keep within proper bounds, and any attempt to inject improper matter may be stopped by the court without the necessity of an objection. The attorneys will refrain from thanking the jury for acting as jurors and after return of a verdict by the jury neither the attorneys, parties, nor spectators shall offer their congratulations, thanks or condemnation to the jury for the verdict returned.

After a verdict concerning the case, attorneys are prohibited from harassing or exhibiting disrespect for the jurors. The jurors shall be instructed by the court to report any harassment or objectionable conduct from any party, attorney, or representative of any party or attorney to the court immediately.

It is the duty of the court to enforce this rule of its own motion and without objection being made, but the court's failure to do so, where there is no objection made, will not constitute a ground for exception.

JUDICIAL DECISIONS

Closing argument.
Comments about opposing counsel.
Contempt.

Closing argument.

Defendant argued that the prosecution's attack on defense counsel implied that he presented a deceptive argument to the jury and violated defendant's due process rights by denying him the right to a fair and impartial trial; although Miss. Unif. Cir. & County Ct. Prac. R. 3.02 prohibited attorneys from attacking the opposing attorney during closing arguments, because the trial court sustained defendant's objection to the prosecutor's first statement, the error, if any, was cured or harmless beyond a reasonable doubt. Baker v. State, 930 So. 2d 399 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 497 (Miss. 2006).

Comments about opposing counsel.

Prosecutor's comment that defense counsel knew defendant was in a certain city and was trying to hide that fact and the prosecutor's comment that defense counsel was trying to hide defendant's silence and tears from the jury did not attack the personal character or integrity of defense counsel; thus, they did not rise to the level of prohibited comments under Miss. Unif. Cir. & County Ct. Prac. R. 3.02. Davis v. State, 970 So. 2d 164 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 968 So. 2d 948, 2007 Miss. LEXIS 652 (Miss. 2007).

Contempt.

Defendant was guilty of direct criminal contempt in representing a client in a criminal matter that resulted in a mistrial because defendant commented during opening statement that the prosecution believed defendant's client should already have been on a bus to a penitentiary. Defendant also inappropriately stated and insinuated before the jury that the prosecution had betrayed the jury's trust and that both the prosecution and the trial court were preventing defendant from informing the jury of the truth. Minka v. State, 234 So. 3d 353 (Miss. 2017).

Defendant, an attorney, was guilty of direct criminal contempt for displaying willful, contemptuous conduct in the courtroom that interfered with the orderly administration of justice where he restarted his argument following the pronouncement of the sentence; defendant's announced purposed of diligently representing his client did not excuse the conduct that violated professional conduct rules. Defendant also violated a rule stating that attorneys had to manifest an attitude of professional respect towards the judge. Spore v. State, 214 So. 3d 223 (Miss. 2017).

Rule 3.03. Number of petit jurors summoned; circuit and county and eminent domain court may use same venire.

The court may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty. The circuit and county court may employ the same jury venire in the selection of petit juries. Special Courts of Eminent Domain may employ the jury venire of either county or circuit court in the selection of petit juries, or may direct the clerk of court concerning the number of petit jurors needed to be summoned for jury duty.

Rule 3.04. Communication with jury.

Except as provided by these rules, no person or attorney for the person involved in any case may communicate with or offer any favor, however slight, to any person on the jury venire.

Rule 3.05. Voir dire.

In the voir dire examination of jurors, the attorney will question the entire venire only on matters not inquired into by the court. Individual jurors may be examined only when proper to inquire as to answers given or for other good cause allowed by the court. No hypothetical questions requiring any juror to pledge a particular verdict will be asked. Attorneys will not offer an opinion on the law. The court may set a reasonable time limit for voir dire.

JUDICIAL DECISIONS

Hypothetical questions.
Individual voir dire.
Particular verdict.
Time limit.
Illustrative cases.

Hypothetical questions.

Trial court did not err when it allowed the State to ask jurors if they could convict a thug for shooting a thug during voir dire because although Miss. Unif. Cir. & County Ct. Prac. R. 3.05 prohibited the posing of hypothetical questions to the venire panel during voir dire that required a juror to pledge a particular verdict, the State asked a hypothetical question about thugs and did not specifically request a verdict during voir dire. Anderson v. State, 1 So. 3d 905 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 15 (Miss. 2009).

In a death penalty case, the trial court acted within its discretion in ruling that defense counsel's attempt to elicit statements from venire members regarding specific circumstances warranting the imposition of the death penalty violated the prohibition on hypothetical questions; the trial court's ruling on the challenged voir dire questions did not prevent defense counsel from probing prospective jurors' ability to consider mitigation evidence, as the record demonstrated that defense counsel asked a number of questions pertaining to mitigation evidence. Ross v. State, 954 So. 2d 968 (Miss. 2007).

Although prosecutor could not ask hypothetical questions, questions posed were clearly framed to determine whether jurors understood their function, not to secure a pledge to return a guilty verdict; hence, the prosecutor's questions during voir dire were permissible. Cotton v. State, 790 So. 2d 235 (Miss. Ct. App. 2001).

A hypothetical question does not create per se reversible error where the prosecutor does not "specifically" request or require that the venire pledge a verdict one way or another in response to his questions and comments; ascertaining whether jurors are capable of returning a specific verdict differs greatly from requiring them to pledge a specific verdict under a hypothetical question. Longmire v. State, 749 So. 2d 366 (Miss. Ct. App. 1999).

A hypothetical question does not create per se reversible error where the prosecutor does not specifically request a verdict during voir dire. Robinson v. State, 726 So. 2d 189 (Ct. App. 1998).

Individual voir dire.

Because the circuit court allowed defense counsel to ask the members of the venire if they had formed an opinion based on the information that they had heard, and because none indicated that they had formed an opinion based on the information that they had read or heard, there was no need to engage in individual voir dire. Johnson v. State, 132 So. 3d 616 (Miss. Ct. App. 2013).

In a manslaughter case, individualized sequestered voir dire was not warranted under Miss. Unif. Cir. & Cty. R. 3.05 because there was no showing of prejudice; moreover, the jurors who had heard about the case stated that they were able to render a fair and impartial decision. Speagle v. State, 956 So. 2d 237 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 957 So. 2d 1004, 2007 Miss. LEXIS 296 (Miss. 2007).

In a capital murder case, a trial court did not err by denying defendant's motion for sequestration during voir dire because the trial court allowed jury questionaires and open voir dire; moreover, the trial court offered the option of small group voir dire, prospective jurors were allowed to approach the bench to ask questions, and defense counsel was given the opportunity to have additional questions put to the prospective jurors. Le v. State, 913 So. 2d 913 (Miss. 2005), writ of certiorari denied by 546 U.S. 1004, 126 S. Ct. 622, 163 L. Ed. 2d 508, 2005 U.S. LEXIS 8254, 74 U.S.L.W. 3288 (2005).

In a capital murder case, the trial court did not err in denying defendant's request to conduct individual sequestered voir dire; none of the prospective jurors whom defendant sought to see in an individual voir dire actually served on the jury that was seated and defendant presented no evidence of any harm or prejudice that resulted because of the denial of individual voir dire. Howell v. State, 860 So. 2d 704 (Miss. 2003), writ of certiorari dismissed by 543 U.S. 440, 125 S. Ct. 856, 160 L. Ed. 2d 873, 2005 U.S. LEXIS 1371, 18 Fla. L. Weekly Fed. S 105 (2005).

In a case where defendant father and defendant adopted son were convicted of conspiracy to commit sexual battery, sexual battery, and contributing to the delinquency of a minor, beyond asserting that the pretrial publicity had an effect on prospective jurors, defendant father did nothing to demonstrate an abuse of discretion, in fact, he made no argument regarding the prejudicial effect of not being allowed to individually voir dire the venire, nor did he provide the Supreme Court with any evidence supporting his brief assertions regarding the effect of the alleged publicity on the prospective jurors; thus, the trial court did not abuse its discretion in denying individualized, sequestered voir dire under Miss. Unif. Cir. & County Ct. Prac. R. 3.05. King v. State, 857 So. 2d 702 (Miss. 2003).

The court properly refused to allow the defendant to conduct individual voir dire regarding the jurors' knowledge of his previous convictions and death sentences for murdering two Mississippi State students since (1) due to the highly publicized nature of the defendant's first capital murder trial, it would have been unlikely for the trial court to seat a jury of individuals who were unaware of the prior convictions, (2) of the 28 members of the first venire who had heard about the prior case, all but two stated that they would be able to be fair and impartial jurors and the other two were dismissed for cause, and (3) it was doubtful that individual voir dire would have encouraged any of the jurors to admit that they would be partial or unfair. Manning v. State, 735 So. 2d 323 (Miss. 1999).

Trial court did not abuse its discretion in denying defendant's motion for individual sequestered voir dire; methods employed by trial judge adequately addressed concerns regarding pretrial publicity and jurors' knowledge of the case. McFarland v. State, 707 So. 2d 166 (Miss. 1997).

Particular verdict.

Because the trial judge's questions during voir dire about whether the jury would be able to convict defendant of aggravated assault even if no gun was admitted into evidence did not cross the clear line by asking venire members to pledge a specific verdict if the State proved a particular set of facts, no plain, clear, or obvious error was committed; in fact, no error was committed because the trial judge was well within his broad discretion when asking the venire about any preconceived notions regarding what evidence was required to convict defendant. Evans v. State, 133 So. 3d 369 (Miss. Ct. App. 2013).

In a murder prosecution, the state did not improperly seek to obtain a pledge of a particular verdict from the jurors when the prosecutor asked prospective jurors whether they would require the state to produce the murder weapon in order to find the defendant guilty. Smothers v. State, 756 So. 2d 779 (Miss. Ct. App. 1999).

The prosecutor did not improperly require prospective jurors to pledge a particular verdict in the event that the evidence presented a certain set of facts where, during voir dire, he asked whether the venire would still be able to consider a guilty verdict even though there was no weapon, fingerprint, DNA, or confession evidence presented. Corner v. State, 744 So. 2d 793 (Miss. Ct. App. 1999).

Time limit.

Trial judge did not abuse his discretion in imposing a 10-minute time limitation for voir dire and by defendant's own admission, defendant's lawyer exceeded the time limitation, continued voir dire for 12 more pages in the transcript, and had plenty of time to pose a specific question to the potential jurors regarding their past experience with the crime of sexual assault; the failure of defendant's counsel to ask a question regarding sexual assault during voir dire could not be attributed to the time limitation set for voir dire. Evans v. State, 984 So. 2d 308 (Miss. Ct. App. 2007), writ of certiorari denied by 984 So. 2d 277, 2008 Miss. LEXIS 289 (Miss. 2008).

Defendant's convictions for armed robbery and arson were proper where the time allotted for voir dire was not inadequate; limiting defendant's counsel to 40 minutes was not an abuse of discretion. Payton v. State, 897 So. 2d 921 (Miss. 2003).

The trial court's limitation of voir dire to 15 minutes per side was proper, especially where defense counsel was granted two extensions beyond the 15 minutes and defendant suffered no prejudice. Beckham v. State, 735 So. 2d 1059 (Miss. Ct. App. 1999).

Illustrative cases.

Trial court did not improperly limit defense voir dire by sustaining the State's objection to questions asking if the juror could or could not use an alcohol problem as a mitigating factor. Evans v. State, 226 So. 3d 1 (Miss. 2017).

Defendant made no contemporaneous objection at trial to the prosecutor's question on voir dire, such that the issue was waived, but notwithstanding the procedural bar, the issue was without merit because the error, if any, was harmless; Miss. Unif. Cir. & Cty. R. 3.07, cited by defendant, dealt with written jury instructions and was irrelevant to the issue, and assuming for the sake of argument that the prosecution impermissibly offered an opinion on the law, contrary to Miss. Unif. Cir. & Cty. R. 3.05, any error was harmless because the prosecutor did not misstate the law and the jury was later properly instructed on the law of possession, in defendant's trial for possession of more than five kilograms of marijuana in Miss. Code Ann. § 41-29-139(c)(2)(G). Morales v. State, 990 So. 2d 273 (Miss. Ct. App. 2008).

Defendant's conviction for aggravated assault was appropriate because statements made during voir dire were simply made to determine if the potentialjurors understood their objectives of weighing the evidence and determining the credibility of witnesses. Thus, they did not violate Miss. Unif. Cir. & Cty. R. 3.05. Kimble v. State, 920 So. 2d 1058 (Miss. Ct. App. 2006).

In a manslaughter case, the prosecutor did not ask the jury to pledge a verdict based on less than reasonable doubt because the prosecutor explained that the state's burden of proof was beyond a reasonable doubt, and he was also trying to determine that the jury would not base its verdict on sympathy. McBride v. State, 934 So. 2d 1033 (Miss. Ct. App. 2006).

The prosecutor improperly explained his perspective of the law governing the presentation of the case to the jury by stating that the defendant was clothed with a presumption of innocence but that such presumption was erased when the state presented evidence sufficient to meet the burden of proof, but such error was harmless as there was no misstatement of the law and the jurors were later properly instructed again as to the presumption of innocence and the burden of proof by the trial judge. Goodin v. State, 787 So. 2d 639 (Miss. 2001), writ of certiorari denied by 535 U.S. 996, 122 S. Ct. 1558, 152 L. Ed. 2d 481, 2002 U.S. LEXIS 2500, 70 U.S.L.W. 3640 (2002), remanded by 2009 Miss. LEXIS 405 (Miss. Aug. 27, 2009), remanded by 102 So. 3d 1102, 2012 Miss. LEXIS 616 (Miss. 2012).

The prosecutor improperly explained his perspective of the law governing the presentation of the case to the jury by stating that there was no essential difference between the burden of proof in a circumstantial evidence case and in a case that depends on direct evidence, but such error was harmless as the verdict rendered was unattributable to these misstatements where the jurors were later properly instructed both in written and oral form as to the burden of proof by the trial judge, and they were instructed to apply these rules to the evidence in reaching a verdict. Goodin v. State, 787 So. 2d 639 (Miss. 2001), writ of certiorari denied by 535 U.S. 996, 122 S. Ct. 1558, 152 L. Ed. 2d 481, 2002 U.S. LEXIS 2500, 70 U.S.L.W. 3640 (2002), remanded by 2009 Miss. LEXIS 405 (Miss. Aug. 27, 2009), remanded by 102 So. 3d 1102, 2012 Miss. LEXIS 616 (Miss. 2012).

There was no violation of the statute, notwithstanding the assertion that, during voir dire, the prosecutor endangered the defendant's right to a fair trial by omitting an element of the crime when he listed what the state needed to prove to convict the defendant, because no showing was made that the comment resulted in the impaneling of a jury incapable of reaching a fair and impartial verdict. McCollum v. State, 785 So. 2d 279 (Miss. 2001).

The state did not require the jury to pledge a particular verdict when the prosecutor merely asked whether testimony based on the defendant's mental deficiency would affect the jury's judgment. Dabney v. State, 772 So. 2d 1065 (Miss. Ct. App. 2000).

In a prosecution for armed robbery and aggravated assault, the prosecuting attorney did not improperly ask a hypothetical question intended to obtain a pledge of a particular verdict when he asked whether the jurors could follow the instructions given by the court without regard to the youthfulness of the defendants. Forbes v. State, 771 So. 2d 942 (Miss. Ct. App. 2000).

There was no violation of this rule where, during voir dire, the prosecutor stated, "It happens from time to time that there may be a conflict in the evidence. State's witnesses may testify to a certain set of circumstances, and if the Defendant chooses to call witnesses, they may testify to something different. But, do you understand that a mere conflict in the evidence does not necessarily create a reasonable doubt? That's why we have twelve jurors, to sit up here and listen to the case, to resolve that conflict and decide what the truth is," notwithstanding defendant's assertion that this statement (1) required the jury to resolve all conflicts, thereby causing them to do away with the consideration of reasonable doubt (2) offered an opinion, and (3) misstated the law. Palm v. State, 748 So. 2d 135 (Miss. 1999).

There was no violation of this rule where, during voir dire, the prosecutor stated, "So, my final question to you is simply this: After you have heard all of the evidence and you are satisfied the State has proven the Defendant's guilt beyond a reasonable doubt, can you tell me that you will act upon your oath as jurors at that point and return a verdict of guilty? Other than the people who have already indicated they have a situation, they are either related to or friends with the defendant and might not want to sit on this particular jury, can the rest of you return a verdict of guilty as charged?," notwithstanding defendant's assertion that the statement constituted a direct requirement that the jurors pledge a verdict. Palm v. State, 748 So. 2d 135 (Miss. 1999).

There was no violation of this rule where, during voir dire, the prosecutor stated, "The Defendant as he sits here right this minute, is clothed with a presumption of innocence. The law says at this point we have to presume he is innocent, but do you understand once we go forward with the evidence and produce testimony to prove to your satisfaction his guilt, then at that point, he no longer enjoys that presumption of innocence? Does everyone understand that?," notwithstanding defendant's assertion that the statement constituted an implied request that the jury pledge a verdict. Palm v. State, 748 So. 2d 135 (Miss. 1999).

Rule 3.06. Conduct of jurors.

Jurors are not permitted to mix and mingle with the attorneys, parties, witnesses and spectators in the courtroom, corridors, or restrooms in the courthouse. The court must instruct jurors that they are to avoid all contacts with the attorneys, parties, witnesses or spectators.

JUDICIAL DECISIONS

Juror contacts.

Nothing in the record overcame the presumption that the juror followed the trial court's instructions not to talk to anyone and if the bailiff had seen the juror communicating with someone outside the courtroom, he would have informed the trial judge, who then would have conducted a hearing on the matter. Neal v. State, 15 So. 3d 388 (Miss. 2009).

The trial court did not err in failing to grant a judgment notwithstanding the verdict or a new trial due to alleged communications between a juror and a witness for the state where (1) the defendant's witness offered only vague, unsubstantiated, after-the-fact testimony, and the defendant presented no additional proof to support the testimony of the witness, and (2) the court presumed that the jurors adhered to the trial court's repeated instructions to refrain from communicating with the attorneys or anyone else connected to the case. Moore v. State, — So. 2d —, 2000 Miss. LEXIS 264 (Miss. Dec. 21, 2000), opinion withdrawn by, substituted opinion at 787 So. 2d 1282, 2001 Miss. LEXIS 164 (Miss. June 21, 2001).

Rule 3.07. Jury instructions.

At least twenty-four hours prior to trial each of the attorneys must number and file the attorney's jury instructions with the clerk, serving all other attorneys with copies of the instructions. Except for good cause shown, the court will not entertain a request for additional instruction or instructions, which have not been pre-filed. At the conclusion of testimony, the attorneys must select no more than six jury instructions on the substantive law of the case from the instructions prefiled and present them to the judge. The court, for good cause shown, may allow more than six instructions on the substantive law of the case to be presented. The attorneys must dictate into the record their specific objections to the requested instructions stating the grounds for each objection. Instructions will not be given after closing argument has begun except in extreme cases of injustice and in such cases the adverse parties shall have an opportunity to submit other instructions.

The judge may instruct the jury. The court's instructions must be in writing and must be submitted to the attorneys, who in accordance with this rule, must dictate their specific objections into the record.

All instructions shall be captioned at the top of the page "Jury Instruction #__" in order to allow the court to number the instructions given in such sequence as it deems proper. All letters and numerals identifying instructions submitted by parties for the court's consideration shall be in conformity with Rule 51(b)(2), Mississippi Rules of Civil Procedure, and shall be placed in the bottom right hand corner of each page.

All instructions will be read by the court in whatever order the court chooses, will be available for the attorneys during their argument, and will be carried by the jury into the jury room when they retire to consider their verdict. (Amended effective July 1, 2017.)

JUDICIAL DECISIONS

Applicability.
Failure to object.
Harmless error.
Limit.
Timely submission.

Applicability.

Defendant made no contemporaneous objection at trial to the prosecutor's question on voir dire, such that the issue was waived, but notwithstanding the procedural bar, the issue was without merit because the error, if any, was harmless; Miss. Unif. Cir. & County Ct. Prac. R. 3.07, cited by defendant, dealt with written jury instructions and was irrelevant to the issue, and assuming for the sake of argument that the prosecution impermissibly offered an opinion on the law, contrary to Miss. Unif. Cir. & County Ct. Prac. R. 3.05, any error was harmless because the prosecutor did not misstate the law and the jury was later properly instructed on the law of possession, in defendant's trial for possession of more than five kilograms of marijuana in Miss. Code Ann. § 41-29-139(c)(2)(G). Morales v. State, 990 So. 2d 273 (Miss. Ct. App. 2008).

Failure to object.

Not only did defendant fail to object to the jury instruction at issue, but when asked by the trial judge if he had an objection, his response was, "No, sir, we don't have a problem with that." Accordingly, defendant waived appellate review by not objecting to the jury instruction at trial, Bynum v. State, 929 So. 2d 324 (Miss. Ct. App. 2005), affirmed by 929 So. 2d 312, 2006 Miss. LEXIS 261 (Miss. 2006).

Harmless error.

Defendant failed to show how he was prejudiced when the trial court instructed the jury on the lesser-included offense of possession when the prosecutor failed to file the request for such an instruction at least 24 hours prior to trial. Watkins v. State, 101 So. 3d 628 (Miss. Aug. 16, 2012), modified by 2012 Miss. LEXIS 624 (Miss. Dec. 13, 2012).

Where jury instruction was not filed twenty-four hours before trial, as required under Miss. R. CCP 3.07, the error was harmless because the defendant failed to show any prejudice resulting from the untimely filing of the instruction. Hill v. State, 929 So. 2d 338 (Miss. Ct. App. 2005).

Defendant's convictions for manufacture of a controlled substance and possession of a controlled substance were both proper in part where defendant failed to offer any proof of prejudice resulting from a late jury instruction given to the jury; thus, the error was harmless. Clair v. State, 845 So. 2d 733 (Miss. Ct. App. 2003).

Limit.

Chancellor did not abuse its discretion in a will contest by allowing the contestants to the will to submit more than six jury instructions and in the chancellor's decision to give more than six of the contestants' submitted instructions because, the jury instructions as a whole, fairly announced the applicable caselaw and created no injustice. Posey v. Pope, 269 So. 3d 1213 (Miss. Ct. App. 2018).

Defendant's argument that six-instruction limit denied the jury instructions regarding weighing and deliberations in sentencing phase in capital case was without merit. Evans v. State, 725 So. 2d 613 (Miss. 1997), cert. denied, 525 U.S. 1133, 119 S. Ct. 1097, 143 L. Ed. 2d 34 (1999).

Timely submission.

Finding in favor of the bank in the customer's action for fraud was improper because two jury instructions likely confused and misled the jury as to the correct principle of law; additionally, the customer's objections were not waived because she objected to both instructions in a jury instruction conference held out of the jury's presence before the instructions were given. Savory v. First Union Nat'l Bank of Del., 954 So. 2d 930 (Miss. 2007).

Although the State plainly violated Miss. Unif. Cir. & County Ct. Prac. R. 3.07 governing the filing of proposed instructions, defendant did not show the possible alternative theories of defense he might have raised had he known that the State intended to ask for a manslaughter instruction; therefore, he was not prejudiced by the delay. Carter v. State, 858 So. 2d 212 (Miss. Ct. App. 2003).

The failure of the State to submit its jury instructions within 24 hours of the trial was harmless error; the state submitted its jury instructions at 10:45 A.M. on Friday and the court did not reconvene until 1 P.M. on Monday, and the appellants had ample time to review the State's jury instructions and were not prejudiced. Blue v. State, 716 So. 2d 567 (Miss. 1998).

Rule 3.08. Duty of bailiff.

The bailiff will escort the impaneled jury each time they enter or leave the courtroom during the trial and after the verdict. All attorneys, litigants, and spectators will be seated when the jury enters or leaves the courtroom.

Rule 3.09. Unnecessary witnesses.

No party shall subpoena unnecessary witnesses to repeatedly prove the same fact or set of facts. The court may, in its discretion, tax the per diem and mileage of all unnecessary witnesses against the party or attorney for the party causing them to be subpoenaed whether or not they are called to testify. In all cases, the mileage and per diem of any witness not called to testify will be taxed against the party causing them to be subpoenaed, unless good cause to the contrary be shown. Attorneys are directed to confer with their witnesses prior to commencement of trial, and no recesses shall be permitted for conferring with witnesses who were accessible before trial.

JUDICIAL DECISIONS

Illustrative cases.

Trial court did not abuse its discretion in denying defendant's request to call a witness at trial because defendant attempted on the day of trial to broadly and ambiguously subpoena all accompanying police officers who answered a call to a hotel the day of the alleged eviction. Williams v. State, 167 So. 3d 252 (Miss. Ct. App. 2015).

The use of two witnesses to testify to the dying declarations of a murder victim did not violate this rule since the testimony of both witnesses was required to satisfy the requirements for the introduction of the dying declarations. Morris v. State, 777 So. 2d 16 (Miss. 2000).

Rule 3.10. Jury deliberations and verdict.

The court may direct the jury to select one of its members to preside over the deliberations and to write out and return any verdict agreed upon, and admonish the jurors that, until they are discharged as jurors in the cause, they may communicate upon subjects connected with the trial only while the jury is convened in the jury room for the purpose of reaching a verdict.

The jurors shall be kept together for deliberations as the court reasonably directs.

The court shall permit the jury, upon retiring for deliberation, to take to the jury room the instructions and exhibits and writings which have been received in evidence, except depositions.

After the jurors have retired to consider their verdict the court shall not recall the jurors to hear additional evidence.

The court, after notice to all attorneys, may recall the jury after it has retired and give such additional written instructions to the jury as the court deems appropriate.

If the jury, after they retire for deliberation, desires to be informed of any point of law, the court shall instruct the jury to reduce its question to writing and the court in its discretion, after affording the parties an opportunity to state their objections or assent, may grant additional written instructions in response to the jury's request.

If it appears to the court that the jury has been unable to agree, the court may require the jury to continue their deliberations and may give an appropriate instruction.

If it appears to the court that there is no reasonable probability of agreement, the jury may be discharged without having agreed upon a verdict and a mistrial granted.

When the jurors have agreed upon a verdict they shall be conducted into the courtroom by the officer having them in charge. The court shall ask the foreman or the jury panel if an agreement has been reached on a verdict. If the foreman or the jury panel answers in the affirmative, the judge shall call upon the foreman or any member of the panel to deliver the verdict in writing to the clerk or the court. The court may then examine the verdict and correct it as to matters of form. The clerk or the court shall then read the verdict in open court in the presence of the jury. The court shall inquire if either party desires to poll the jury, or the court may on its own motion poll the jury. If neither party nor the court desires to poll the jury, the verdict shall be ordered filed and entered of record and the jurors discharged from the cause. If the court, on its own motion, or on motion of either party, polls the jury, each juror shall be asked by the court if the verdict rendered is that juror's verdict. Where the required number of jurors have voted in the affirmative for the verdict, the court shall order the verdict filed and entered of record and discharge the jury. If less than the required number cannot agree the court may: 1) return the jury for further deliberations or 2) declare a mistrial. No motion to poll the jury shall be entertained after the verdict is ordered to be filed and entered of record or the jury is discharged.

If a verdict is so defective that the court cannot determine from it the intent of the jury, the court shall, with proper instructions, direct the jurors to reconsider the verdict. No verdict shall be accepted until it clearly reflects the intent of the jury. If the jury persists in rendering defective verdicts the court shall declare a mistrial.

While it is appropriate for the court to thank jurors at the conclusion of a trial for their public service, such comments should not include praise or criticism of their verdict.

After the verdict has been received by the court and entered on the record, the testimony or affidavits of the jurors shall not be received to impeach the verdict, except as permitted by the Mississippi Rules of Evidence. (Amended effective July 1, 2017.)

JUDICIAL DECISIONS

Audiotapes.
Computer animation.
Demonstrative evidence.
Form of verdict.
No violation of the rule found.
Reversible error.
Supplemental instructions.
Videotape.

Audiotapes.

In a prosecution for the sale of cocaine, the court erred when it refused to allow the jury to take an audiotape of the transaction with them during deliberations. White v. State, 732 So. 2d 961 (Miss. 1999).

Computer animation.

Evidence that was admitted for demonstrative purposes only should not be given to the jury for its consideration during deliberations; defendant's computer animation should not have been given to the jury for consideration during their deliberations. Cox v. State, 849 So. 2d 1257 (Miss. 2003).

Demonstrative evidence.

Defendants' conspiracy convictions were proper where the trial court did not err in allowing the jurors to take certain transcripts of telephone conversations into the jury room when they retired to deliberate because the trial judge told the jury that the transcripts were strictly for the purpose of assisting the trier of fact and the jurors were cautioned to listen mainly to the audio. Farris v. State, 906 So. 2d 113 (Miss. Ct. App. 2004).

Court erred in admitting a computer-generated animation into evidence and in allowing it into the jury room, as defendant failed to outline the scientific data used to create the animation evidence, and evidence admitted for demonstrative purposes only should not have been given to the jury for its consideration during deliberations. Cox v. State, — So. 3d —, 2003 Miss. LEXIS 103 (Miss. Mar. 13, 2003), opinion withdrawn by, substituted opinion at 849 So. 2d 1257, 2003 Miss. LEXIS 337 (Miss. July 17, 2003).

Form of verdict.

Where a jury returned a verdict of capital murder with avoiding arrest as a mitigating factor, and the verdict stated "the offense was committed with the purpose of covering up and hiding evidence," there was no doubt that the jury found the "avoiding arrest" aggravator to exist under Miss. Code Ann. § 99-19-101(5)(e), and the verdict form complied with Miss. Unif. Crim. R. Cir. Ct. Prac. 3.10. Thorson v. State, 895 So. 2d 85 (Miss. 2004), writ of certiorari denied by 546 U.S. 831, 126 S. Ct. 53, 163 L. Ed. 2d 83, 2005 U.S. LEXIS 6177, 74 U.S.L.W. 3203 (2005), remanded by 994 So. 2d 707, 2007 Miss. LEXIS 497 (Miss. 2007).

Circuit and County Court Practice

Trial court did not err in failing to grant a mistrial after the jury returned two separate verdicts, as the judge redirected the jury's attention to the instruction emphasizing there could be only one verdict and instructed the jury to resume deliberations until a unanimous decision as to one form of the verdict was reached, and the jury returned five minutes later with a verdict finding defendant guilty of burglary of a dwelling Clay v. State, 881 So. 2d 323 (Miss. Ct. App. 2004), writ of certiorari denied by 893 So. 2d 1061, 2005 Miss. LEXIS 96 (Miss. 2005).

It was not error for the trial court to submit a duplicate form of verdict instruction, notwithstanding the contention that in doing so, the court caused a verdict to be returned that did not satisfy the requirement that the court receive a written verdict; the instruction did nothing more than provide a list of alternative forms for the verdict and space where the jury could indicate its choice, and once a verdict was reached and the jury marked its decision on the form and handed it to the clerk, as instructed by the court, the requirement of was satisfied. Johns v. State, 746 So. 2d 947 (Miss. Ct. App. 1999).

No violation of the rule found.

Where decedent was killed in a one-car collision after a tire on his truck burst, his estate sued the manufacturer; the jury returned an interrogatory verdict showing that jurors were divided on the defective-manufacture claim, but when polled all agreed that the condition of the tire was not the proximate cause of decedent's death. The jury substantially complied with the law in rendering the verdict; the trial court was not required to send the jury back for further deliberations pursuant to Miss. Unif. Cir. & Cty. R. 3.10. Oliver v. Goodyear Tire & Rubber Co., 10 So. 3d 976 (Miss. Ct. App. 2009).

Defendant was validily convicted by a verdict of the jury accepted and recorded in court, Miss. Code Ann. § 99-19-3(1), as the proceedings were in full compliance with Miss. Unif. Cir. & County. Ct. Prac. R. 3.10 and the trial court did not have to state expressly that the court accepted the verdict in order to effect defendant's conviction. Neal v. State, 15 So. 3d 388 (Miss. 2009).

Although the record reflected that three jurors did not give audible responses when the trial judge polled them to determine the unanimity of their guilty verdict, this did not support defendant's contention that the only conclusion that could be reached was that the jurors did not agree with the verdict. Although it was customary and expected that a juror give an audible response, nothing in Rule 3.10 of the Uniform Rules of Circuit and County Court required that each juror give an audible response; it mandated only that each juror be asked by the circuit court if the announed verdict was that juror's verdict. Edwards v. State, 997 So. 2d 241 (Miss. Ct. App. 2008).

Trial court did not abuse its discretion by giving the jury a supplemental instruction because the initial instructions and the supplemental instructions correctly stated the law and the trial court complied with Miss. Unif. Cir. & Cty. R. 3.10. The second supplemental instruction directed the jury to the portion of the instruction they identified as troublesome, plainly told the jury that it was self-explanatory, and then further clarified that the verdict should be based on the evidence that was presented from the witness stand. Howard v. State, 2 So. 3d 669 (Miss. Ct. App. 2008), writ of certiorari denied by 999 So. 2d 1280, 2009 Miss. LEXIS 77 (Miss. 2009).

Where defendant requested that the jury be polled after its finding of guilty, and the trial court instructed the jurors to stand and for each of them to individually indicate whether the verdict as read was his or her verdict and each juror answered in the affirmative, because defendant failed to object to the method of polling, and in fact expressed his satisfaction with its results, there was no merit to his issue on appeal that the circuit court had failed to adequately poll the jury. Enlow v. State, 878 So. 2d 1111 (Miss. Ct. App. 2004), writ of certiorari denied by 888 So. 2d 1177, 2004 Miss. LEXIS 1479 (Miss. 2004).

In a capital murder case, when faced with a juror who questioned his earlier assent to the death sentence, the trial judge did not err in sending the jury back for further deliberations, did not coerce the jury into imposing a death sentence, and was not faulted for failing to give an instruction derived from the situation in Sharplin. Howard v. State, 853 So. 2d 781 (Miss. 2003), writ of certiorari denied by 540 U.S. 1197, 124 S. Ct. 1455, 158 L. Ed. 2d 113, 2004 U.S. LEXIS 1327, 72 U.S.L.W. 3537 (2004).

Defendant's convictions for armed robbery and arson were proper where it was obvious that the jury was confused about the voting process and that confusion was not alleviated by reference to the initial jury instructions; therefore, there was no doubt that the trial court had the authority to give supplemental instructions to the jury. Payton v. State, 897 So. 2d 921 (Miss. 2003).

Trial court had the authority under Miss. Unif. Cir. & County Ct. Prac. R. 3.10 to give the jury supplemental instructions, and the trial court did not err in giving the jury an additional instruction of voluntary intoxication as a defense and in rereading the murder and manslaughter instructions to the jury, nor did the court find any violation of Miss. Code Ann. § 99-17-35; the intoxication instruction was necessary in order to guide the jury in making an informed decision on defendant's guilt, and the court found no harm emanating from the trial judge's rereading of the murder and manslaughter instructions. Thornton v. State, 841 So. 2d 170 (Miss. Ct. App. 2003).

Reversible error.

Defendant's purported conviction for robbery was plain error because he had been indicted for burglary, not the entirely distinct crime of robbery, which was not a lesser-included offense of burglary, and a court could not make, alter, or substantively amend a felony indictment; defendant's conviction for robbery was a plain, clear, and obvious error that violated his fundamental rights and constituted a manifest miscarriage of justice. Pace v. State, 242 So. 3d 107 (Miss. 2018).

In a case involving Medicaid fraud, a trial court erred by giving additional instructions under Miss. Unif. Cir. & Cty. R. 3.10 after the jury began its deliberations because it was not necessary; the trial court should not have used both the defendant's and the state's proposed instructions because they were confusing and impossible to follow. Woods v. State, 965 So. 2d 725 (Miss. Ct. App. 2007).

In a negligence case (slip and fall), the trial judge abused his discretion in twice orally reinstructing the jury. That was not to say that a trial judge could never instruct a jury that the verdict was not in proper form; however, the trial judge stretched his comments beyond the bounds of merely seeking to have the jury clarify the verdict, and the conflicting special verdicts, coupled with the series of intervening erroneous oral instructions constituted reversible error. HWCC-Tunica, Inc. v. Jenkins, 908 So. 2d 150 (Miss. Ct. App. 2004), reversed by 907 So. 2d 941, 2005 Miss. LEXIS 368 (Miss. 2005).

Although defendant's counsel was tardy in the request for a jury poll, the jury was still in the courtroom. The trial court's failure to poll the jury was reversible error. McLarty v. State, 842 So. 2d 590 (Miss. Ct. App. 2003).

Supplemental instructions.

Trial court's responses to jury questions did not entitle defendant to relief because the court (1) was cautious and sought the input of both the State and defendant before responding to the questions, and (2) consulted secondary authorities for guidance. Brisco v. State, — So. 3d —, 2019 Miss. App. LEXIS 481 (Miss. Ct. App. Oct. 1, 2019).

Trial court was within its authority to issue a supplemental instruction because the jury was fairly and fully appraised of the applicable law through the instructions given; the supplemental instruction charged the jury it had to find beyond a reasonable doubt that defendant was aware of the presence and character of a particular item, and the item was subject to his dominion and control. Hartzog v. State, 240 So. 3d 462 (Miss. Ct. App. 2017).

Defendant's claim that the trial court erred in issuing a supplemental instruction and in instructing the jury to continue deliberations was procedurally barred because the defense failed to preserve the issue through a contemporaneous objection and failed to raise the issue in posttrial motions; the trial court was within its discretion when it issued the jury charge in accordance with the rule, and the supplemental instructions the defense agreed upon were consistent with that charge. Ainsworth v. State, 236 So. 3d 820 (Miss. Ct. App. 2017), writ of certiorari denied by 236 So. 3d 820, 2018 Miss. LEXIS 79, 2018 WL 1137618 (Miss. Feb. 22, 2018).

Trial court did not abuse its discretion in responding to the jury's question as to the definition of depraved heart because the instructions it provided demonstrated the proper rules of law and were not erroneous, and the supplemental instruction was a proper statement of the law. the jury received three separate instructions on self-defense. Swanagan v. State, 229 So. 3d 698 (Miss. 2017).

Approximately thirty minutes into jury deliberations, the jury sent the trial judge a written note that asked whether defendant was being charged with armed or attempted robbery. The trial court did not abuse its discretion in giving a supplemental instruction to the jury in accordance with Miss. Unif. Cir. & County Ct. Prac. R. 3.10. Hughes v. State, 983 So. 2d 270 (Miss. 2008), writ of certiorari denied by 555 U.S. 1052, 129 S. Ct. 633, 172 L. Ed. 2d 620, 2008 U.S. LEXIS 8544, 77 U.S.L.W. 3324 (2008).

Videotape.

Trial court did not err by allowing a jury to view a videotape of an out-of-court recorded interview of the alleged victim as evidence, similar to live testimony by witnesses, and by then prohibiting this particular evidence from being taken into the jury room for deliberations. Furthermore, defendant suffered no prejudice as a result of the court's decision not to allow this evidence into the jury room because there was sufficient evidence to support the jury's verdict apart from the videotape. Ellis v. State, 141 So. 3d 415 (Miss. Ct. App. 2013), writ of certiorari denied by 140 So. 3d 940, 2014 Miss. LEXIS 317 (Miss. June 26, 2014), dismissed in part by 2015 U.S. Dist. LEXIS 146762 (S.D. Miss. Oct. 29, 2015).

Rule 3.11. Jury recess.

Within the discretion of the court, a recess of jury deliberations may be held. The jury may be reconvened at the time and place set by the court. In cases in which the jury is not sequestered the judge shall instruct the jury as to the following:

1. That the jurors are not to converse with anyone, including family members or another juror, about the case or on any subject connected with the trial. However, a juror may inform another about the juror's schedule.
2. That the jurors are not to form or express an opinion on the case or any subject connected with the trial.
3. That the jurors are not to view any place connected with the case or subject connected with the trial.
4. That the jurors are not to read, listen to, or watch any news account or other matter relating to the case or other subject connected with the trial.
5. That the jurors shall report to the court any communications or attempts to communicate with them on the case or subject connected with the trial.
6. On such other matters as the court deems appropriate.

When the jury is reconvened, the court, in its discretion, may poll the jury to determine if the jury has complied with the court's instructions.

In cases where the jury has been sequestered the court may instruct the jury on as many of the above matters as are appropriate.

Rule 3.12. Mistrials.

Upon motion of any party, the court may declare a mistrial if there occurs during the trial, either inside or outside the courtroom, misconduct by the party, the party's attorneys, or someone acting at the behest of the party or the party's attorney, resulting in substantial and irreparable prejudice to the movant's case.

Upon motion of a party or its own motion, the court may declare a mistrial if:

1. The trial cannot proceed in conformity with law; or
2. It appears there is no reasonable probability of the jury's agreement upon a verdict.

JUDICIAL DECISIONS

Hearsay evidence.
Jury deliberations.
Motion properly denied.
Prosecutorial misconduct.

Illustrative cases.

Hearsay evidence.

Trial court did not err in denying defendant's motion for a mistrial in a case involving receiving stolen property because any prejudice flowing from a prosecutor's reference to hearsay during cross-examination was properly cured by an instruction to the jury. Massey v. State, 863 So. 2d 1019 (Miss. Ct. App. 2004).

In a prosecution of defendant for aggravated assault, the trial court did not err in denying defendant's motion for mistrial and by allowing the case to go to the jury after the trial was tainted by inadmissible hearsay testimony, where the trial court took corrective action by instructing the jury to disregard the hearsay testimony. Norwood v. State, 834 So. 2d 735 (Miss. Ct. App. 2003).

The court properly refused to grant a mistrial in a prosecution for sale of marijuana even though a police officer provided impermissable testimony regarding prior bad acts; the trial court correctly sustained the defendant's objection, admonished the jury to disregard such testimony, and also polled the jury to determine whether "irreparable prejudice" had resulted. Snider v. State, 755 So. 2d 507 (Miss. Ct. App. 1999).

Jury deliberations.

Because the juror stated that she did not know the person who alleged that she had a preexisting relationship with a member of the victim's family, denied the allegations that she had visited the victim's grandmother after his death and had discussed the case with the victim's family prior to serving as a juror, and declared that she had been and would continue to be fair and impartial, the circuit court did not err in allowing the juror to return to deliberations after finding that the allegations of her misconduct were unsubstantiated. Johnson v. State, 132 So. 3d 616 (Miss. Ct. App. 2013).

Trial court proceeded to poll the jury and when it asked the juror if the guilty verdict represented her vote on the charge of sale of cocaine, she initially responded, "No." However, the jury had failed to reach a verdict on another charge against defendant for the sale of marijuana, and the jury then reiterated several times that she had in fact voted to convict on the cocaine charge; there was no evidence to support defendant's argument that the trial court coerced the juror into changing her vote and trial court was correct in denying defendant's motion for a mistrial. Avant v. State, 910 So. 2d 695 (Miss. Ct. App. 2005).

After defense counsel learned from the juror's note that a second juror had been a victim of what was presumed to have been a violent crime, rather than asking the trial court to interrogate the second juror to ascertain the nature of the act perpetrated against her and to determine whether she had understood the voir-dire question, defense counsel chose to move for a mistrial. Based on only the note which came from the first juror, and not juror the second juror, the appellate court was unwilling to hold that the second juror failed to properly respond to the voir-dire question, and in any event, it was an improper characterization to call what occurred a discussion of extraneous evidence. Gibson v. State, 895 So. 2d 185 (Miss. Ct. App. 2004).

Where defendant was on trial for the sale of cocaine in a church zone and possession of cocaine with intent to deliver within a church zone, the notes sent by the jury did not require the judge to comment on the evidence, but merely to provide clarification on "housekeeping" issues to determine which evidence went with which count, and defendant's motion for a mistrial was properly denied. Williams v. State, 856 So. 2d 571 (Miss. Ct. App. 2003), writ of certiorari denied en banc by 860 So. 2d 1223, 2003 Miss. LEXIS 816 (Miss. 2003).

Trial court did not abuse its discretion in refusing to declare a mistrial after improper statements by a potential juror where the trial court had determined that the venire had not been prejudiced by the potential juror's remarks. Davis v. State, 850 So. 2d 176 (Miss. Ct. App. 2003).

In a prosecution for possession of a controlled substance, the trial court properly denied the defendant's motion for mistrial, even though certified copies of the defendant's prior traffic convictions, stemming from the arrest which led to the discovery of cocaine, were inadvertently allowed into the jury room during deliberations; such error was harmless as the jury had previously heard testimony regarding the prior convictions. Huckaby v. State, 743 So. 2d 413 (Miss. Ct. App. 1999).

Motion properly denied.

Movant failed to provide evidence that a mistrial was warranted because there was no evidence of misconduct by a party, a party's attorney, or someone at the behest of the party or party's attorney during trial which resulted in substantial and irreparable prejudice to the movant. Moreover, there was no evidence that the trial was unable to proceed in conformity with the law and the jury was able to agree upon a verdict. Latham v. Johnson, 262 So. 3d 569 (Miss. Ct. App. 2018), writ of certiorari denied by 260 So. 3d 798, 2019 Miss. LEXIS 48 (Miss. Jan. 24, 2019).

Trial court was correct to deny a mistrial but to grant the patient a new trial because the trial was over, and thus, a mistrial was unavailable. Reynolds v. Allied Emergency Servs., 193 So. 3d 625 (Miss. 2016).

Trial court did not abuse its discretion in denying appellant's motion for a mistrial based on the fact that a local minister, who was also an investigator for appellee's counsel, gave the opening prayer as the investigator was never seen by the venire sitting at the counsel table or otherwise conferring with appellee's attorney; allowing the investigator to lead the opening prayer did not amount to an endorsement of appellee's counsel; the prayer occurred off the record and before the case was called; appellant had ample opportunity during voir dire to explore and mitigate any resulting prejudice, but did not voir dire the entire panel about the investigator or about the prayer; and appellant did not suffer irreparable prejudice. Harper v. Edwards, 151 So. 3d 1030 (Miss. Ct. App. 2014).

In defendant's trial on a charge of armed robbery, the trial court did not err by refusing to declare a mistrial based on statements made by a prospective juror during voir dire because even though the prospective juror responded that he knew something about the case and had spoken with the people at the store about the robbery, the juror revealed no details or facts and expressed no opinion about defendant's guilt or innocence; the prospective juror was excused for cause. Lewis v. State, 110 So. 3d 814 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 22 (Miss. Jan. 9, 2014), dismissed without prejudice by 2014 U.S. Dist. LEXIS 96490 (S.D. Miss. July 16, 2014).

There was no cause for a mistrial in defendant's trial on a charge of murder, as the fact that a witness discussed the testimony with another witness who had already testified but was available for recall did not warrant such relief, especially given that defendant did not move for a mistrial but instead, raised the issue on appeal. Branch v. State, 118 So. 3d 646 (Miss. Ct. App. June 19, 2012), writ of certiorari denied by 117 So. 3d 330, 2013 Miss. LEXIS 376 (Miss. July 18, 2013).

Trial court properly denied defendant's motion for a mistrial after becoming aware of potential juror misconduct because the judge: (1) investigated the matter by polling each juror individually; (2) struck the two jurors involved in the misconduct and replaced them with alternate jurors; (3) found the other jurors were not exposed to outside information; and (4) found the juror who had written the note reporting the misconduct could remain impartial. Kee Brown v. State, 75 So. 3d 573 (Miss. Ct. App. 2011), writ of certiorari denied by 76 So. 3d 169, 2011 Miss. LEXIS 585 (Miss. 2011).

Defendant's convictions for sexual battery and conspiracy to commit sexual battery were proper because the trial judge did not err in denying defendant's motion for a mistrial. When the jury poll conflicted with the verdict, the trial judge was permitted to either order the jury to resume its deliberations or order a mistrial; the trial judge, in his discretion, chose to order the jury to resume its deliberations. Powell v. State, 58 So. 3d 55 (Miss. Ct. App. 2011).

Denial of defendant's motion for mistrial pursuant to Miss. Unif. Cir. & County Ct. Prac. R. 3.12 was proper because there was no prejudice to defendant from use of his nickname "Two Pistols" in the State's opening statement. The nickname had evidentiary support in the record from the testimony of the robbery victim, and the reference was an accurate statement of what the State intended to prove. Collins v. State, 30 So. 3d 1239 (Miss. Ct. App. 2010).

Although defendant was brought before a jury venire in waist restraints and handcuffs, there was no abuse of the trial judge's discretion in the finding of no prejudice or in the refusal to grant a mistrial motion because the jury that was chosen did not include any of the prospective jurors that had expressed concern over seeing defendant in handcuffs. Jones v. State, 20 So. 3d 57 (Miss. Ct. App. 2009).

Trial court did not err in refusing to grant defendant's motion for a mistrial in defendant's trial for assault when defendant's husband, the victim, testified that he had died twice because the husband was responding to questions about the extent of his injuries. Ross v. State, 16 So. 3d 47 (Miss. Ct. App. 2009).

Prosecutor's act of requesting in front of the jury that a witness be taken in to custody after he testified was not grounds for a mistrial because, while an arrest of a witness for perjury in the presence of a jury may constitute reversible error, there was no precedent that an arrest of a witness in the presence of the jury for an offense other than perjury constituted reversible error. Roach v. State, 7 So. 3d 911 (Miss. 2009), writ of certiorari denied by 558 U.S. 949, 130 S. Ct. 399, 175 L. Ed. 2d 274, 2009 U.S. LEXIS 7474, 78 U.S.L.W. 3206 (2009).

Defendant's motion for mistrial was properly denied as defense counsel specifically declined to object to the introduction of the videotape of defendant's police interrogation; nothwithstanding the procedural bar, defense counsel declined a corrective instruction, and the references were sufficiently nondescript that any prejudice resulting from their admission was harmless in light of the other evidence of guilt. Pittman v. State, 42 So. 3d 556 (Miss. Ct. App. 2009), writ of certiorari denied by 42 So. 3d 24, 2010 Miss. LEXIS 453 (Miss. 2010).

In a case involving the sale of cocaine, a trial court did not err by denying a request for a mistrial based on defendant's assertion that the State attempted to appeal to the jury's sense of responsibility for a county's major drug problem because, if the challenged statements were removed from the closing argument, the jury would have reached the same verdict based on the evidence presented at trial; therefore, the State's argument did not create an unjust prejudice that influenced the jury's decision. Moreover, the statements in question did not constitute a "send a message" argument; even if the comments were considered improper, the State's comments were not so egregious to have interfered with the fairness of the trial. Mosely v. State, 4 So. 3d 1069 (Miss. Ct. App. 2009).

Whatever error the trial court committed in failing to distinguish the Miss. R. Evid. 404(b) evidence clearly was harmless as the State produced overwhelming evidence of defendant's guilt that went undiscredited, and whatever evidence was admitted by Rule 404(b) was merely superfluous; because the trial court's failure to distinguish evidence of prior bad acts under Rule 404(b) was harmless error, the trial court's refusal to grant defendant's request for a mistrial on the entire indictment was not error. Caldwell v. State, 6 So. 3d 1076 (Miss. 2009).

Circuit court did not err when it overruled defendant's request for a mistrial after the victim testified that defendant was on house arrest when their son was born as defendant experienced no prejudice as a result of the victim's answer to his attorney's question; the circuit court did not abuse its discretion when it declined to grant defendant's request for a mistrial where defendant did not experience any prejudice as a result of the investigator's statement. Hope v. State, 992 So. 2d 666 (Miss. Ct. App. 2008).

In a case involving forcible sexual intercourse, sexual battery, and burglary of a dwelling, a trial court did not err by denying defendant's motion for a mistrial based on a statement made at trial about him being a suspect in a series of crimes; there was no showing of irreparable damage to the case because the jury could have simply thought that the statement was a mistake since defendant was charged in a multi-count indictment, and the jury was presumed to have followed an instruction to disregard. Robinson v. State, 2 So. 3d 708 (Miss. Ct. App. 2008).

In a case involving sexual abuse of children, defendant's Sixth Amendment claim was rejected because he failed to show that he was prejudiced by the denial of the right to view the demeanor of the children as they testified via closed circuit television, pursuant to Miss. R. Evid. 617. Therefore, defendant's motions for a mistrial and a new trial were properly denied. Rollins v. State, 970 So. 2d 716 (Miss. 2007).

Prosecutorial misconduct.

Trial court did not err when it denied a mistrial based on the prosecutor's comments on defendant's right to remain silent because at trial, defendant testified to a different sequence of events than he originally told detectives after his arrest, claiming the defenses of self-defense and heat-of-passion manslaughter; he put his credibility in issue by taking the stand and testifying to a different scenario than the one he provided previously to law enforcement. Therefore, the prosecutor's questions upon cross-examination were admissible under Miss. R. Evid. 613 to show that defendant's prior statements were inconsistent with his statements at trial and to inquire about the novelty of the new sequence of events stated at trial. Robinson v. State, 40 So. 3d 570 (Miss. Ct. App. 2009).

Prosecutor's statement was a permissible comment on the absence of evidence to support defendant's defense as the prosecutor's statement neither referred to defendant's failure to testify, nor by masked implication suggested defendant's silence was evidence of guilt; therefore, the circuit court did not abuse its discretion in overruling defendant's motion for a mistrial. Dora v. State, 986 So. 2d 917 (Miss. 2008), writ of certiorari denied by 555 U.S. 1142, 129 S. Ct. 1009, 173 L. Ed. 2d 302, 2009 U.S. LEXIS 780, 77 U.S.L.W. 3429 (2009).

Judge was within his discretion to deny defendant's motion for a mistrial, as the judge determined that the relevant statements of the prosecutor were not so prejudicial that they would influence the jury's decision; furthermore, since the judge sustained defendant's prompt objections to the comments, any prejudice was cured. Jefferson v. State, 964 So. 2d 615 (Miss. Ct. App. 2007).

Although defendant argued that the trial court erred in failing to grant a mistrial as a result of improper remarks made by the prosecution, immediately before referring to defendant as a child molester the prosecution was reading portions of his statement wherein he stated that he was not a child molester; the prosecutor's remarks constituted fair argument based upon the testimony and the evidence and the facts of the case showed that defendant sexually penetrated the victim, and thus the trial court did not err in failing to grant a mistrial based on the prosecutor's remarks. Divine v. State, 947 So. 2d 1017 (Miss. Ct. App. 2007).

During closing arguments in defendant's trial for possession of cocaine, the prosecutor's comment on defendant's knowledge of the events was a comment on the weight and sufficiency of the evidence offered by the State, rather than on defendant's decision not to testify. The trial court did not err by denying his motion for a mistrial. Johnson v. State, 914 So. 2d 270 (Miss. Ct. App. 2005).

Where defendant was charged with five counts of statutory rape, one count of sexual battery, and three counts of fondling, defendant was not entitled to a mistrial because the State attempted unsuccessfully to introduce evidence of other sexual offenses committed by defendant in violation of a court ruling excluding such evidence. Defendant's attorney declined the judge's attempt to cure any potential prejudice emanating from the remark. Moses v. State, 885 So. 2d 730 (Miss. Ct. App. 2004).

Illustrative cases.

Trial court did not err by denying defendant's motion for a mistrial because defendant failed to establish that good cause existed to believe that improper outside influence of a juror occurred or that prejudicial information was exchanged. Moore v. State, 52 So. 3d 339 (Miss. 2010).

Refusal to declare a mistrial in defendant's murder trial was appropriate because, after a spectator's emotional outburst, the trial court immediately sent the jury out and restored order to the courtroom; there was no further outburst and the trial court obviously did not think that the spectator's moaning was prejudicial to defendant's case. Craft v. State, 970 So. 2d 178 (Miss. Ct. App. 2007), writ of certiorari denied by 977 So. 2d 343, 2008 Miss. LEXIS 89 (Miss. 2008).

In a murder prosecution, while police erred by conducting the pre-trial identification knowing that defense counsel could not be present, the error was not fatal because the victim's in-court identification was based on her view of defendant at the scene of the crime and not based on the lineup; thus, defendant was not entitled to a mistrial. Lattimore v. State, 958 So. 2d 192 (Miss. 2007).

Defendant convicted of burglary was not entitled to a mistrial where a witness referenced bad acts outside the time period given in the indictment; the jury was instructed to disregard the remark. Sandefer v. State, 952 So. 2d 281 (Miss. Ct. App. 2007).

Trial court did not abuse its discretion in denying defendant's motion for a mistrial because the appellate court could not say that the comment by a member of the venire resulted in substantial or irreparable harm to defendant's case since defendant, in his own testimony, admitted to frequent trips to the store, and defendant admitted going to the two different store locations on the day in question; a member of the venire commented that as an employee of the store, they've seen defendant in the store a lot. Watts v. State, 936 So. 2d 377 (Miss. Ct. App. 2006), writ of certiorari denied by 936 So. 2d 367, 2006 Miss. LEXIS 452 (Miss. 2006).

Because from both jurors' testimony it did not appear that the second juror knew anything other than that the first juror overheard some witnesses talking in a bathroom and did not know which witnesses or the substance of the conversation and that his only role was to encourage the first juror to report the incident to the judge, there was nothing to indicate that the second juror was exposed to an outside influence during the trial; thus, the trial court did not abuse its discretion in denying defendant's motion for a mistrial under Miss. Unif. Cir. & County Ct. Prac. R. 3.12 when the trial court did not excuse the second juror. Bracken v. State, 939 So. 2d 826 (Miss. Ct. App. 2006).

Although a voluntary statement made by defendant was in violation of the Fifth and Sixth Amendments since defendant had asked for an attorney, it was properly used for impeachment purposes during a murder trial; moreover, the failure to provide a limiting instruction on such was not error since defendant did not make such a request, and therefore a motion for a mistrial was properly denied. Sipp v. State, 936 So. 2d 326 (Miss. 2006).

Circuit court did not err in failing to declare a mistrial where the record did not support defendant's argument that the cell phone issue was raised during trial, and defendant's failure to preserve the record barred her claim from consideration. Younger v. State, 931 So. 2d 1289 (Miss. 2006), writ of certiorari denied by 549 U.S. 1217, 127 S. Ct. 1271, 167 L. Ed. 2d 95, 2007 U.S. LEXIS 2242, 75 U.S.L.W. 3436 (2007).

By sustaining the objection and informing the jury of the necessity of disregarding the putative prejudicial statements, any potential prejudice was avoided; accordingly, the trial judge's decision to overrule defendant's motion for a mistrial was an appropriate exercise of his discretionary power under the circumstances. Mixon v. State, 921 So. 2d 275 (Miss. 2005).

Even though a police officer improperly stated that injuries to a minor child were not accidental, no mistrial was warranted in a felony child abuse case because the jury was properly admonished. Wells v. State, 913 So. 2d 1053 (Miss. Ct. App. 2005).

In a criminal prosecution for aggravated assault, where the State failed to timely disclose a potential witness who said there was a second shooter, the court was not required to grant defendant a mistrial. Defendant refused an opportunity to subpoena the witness; therefore, he suffered no prejudice. Bankston v. State, 907 So. 2d 966 (Miss. Ct. App. 2005).

Defendant argued that the trial court erred because the prosecutor's question as to whether defendant had "ever been accused of anything" prejudiced the jury by attempting to refer to other crimes which he might have committed. However, defendant never answered the question, and he did not suffer serious and irreparable damage from the unanswered question; thus, his motion for a mistrial was properly denied. Tyler v. State, 911 So. 2d 550 (Miss. Ct. App. 2005), writ of certiorari denied by 920 So. 2d 1008, 2005 Miss. LEXIS 600 (Miss. 2005).

Trial court did not abuse its discretion in denying defendant's motion for a mistrial after the State elicited testimony from defendant's investigator that defendant was incarcerated because defendant did not suffer serious and irreparable damage from the investigator's statement. Moore v. State, 914 So. 2d 185 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 745 (Miss. 2005).

Court did not abuse its discretion during defendant's arson trial in denying defendant's motion for a mistrial because the admissibility of photographs showing a church engulfed in flames was within the court's discretion; jury was later admonished by the court to disregard the photographs. McGee v. State, 907 So. 2d 380 (Miss. Ct. App. 2005), writ of certiorari denied by 910 So. 2d 574, 2005 Miss. LEXIS 450 (Miss. 2005).

In a criminal prosecution for aggravated assault, where the State failed to timely disclose a potential witness who said there was a second shooter, the court was not required to grant defendant a mistrial. Defendant refused an opportunity to subpoena the witness; therefore, he suffered no prejudice. Bankston v. State, 907 So. 2d 966 (Miss. Ct. App. 2005).

There was no physical evidence linking defendant to the burglary but the jury was provided with physical evidence connecting his accomplice to the crime. Then, the jury was told that defendant was able to identify his accomplice close to the crime scene when said identification had already been suppressed due to the violation of defendant's Fifth and Sixth Amendment rights at the time of his arrest (Miranda violation); thus, the identification testimony by the officer was unquestionably prejudicial, the prosecutor's closing argument further compounded the problem by linking the physical evidence connecting the accomplice to the crime to defendant, and the trial court committed reversible error in denying defendant's motions for a mistrial and for a new trial. Carpenter v. State, 910 So. 2d 528 (Miss. 2005).

Defendant argued that the trial court should have granted his motion for a mistrial on the basis that two defense witnesses were intimidated by the county law enforcement officials; however, both of the witnesses did testify at trial, and therefore they could not have been too intimidated. Thus, defendant did not show that the incident prejudiced or damaged his case, and a mistrial was not necessary. Tate v. State, 912 So. 2d 919 (Miss. 2005).

Trial court did not abuse its discretion in denying defendant's motion for a mistrial because the detective's statement that she filed charges against defendant for the murder of the victim did not amount to an improper opinion as to defendant's guilt and was not improper bolstering of the officer's testimony. Young v. State, 891 So. 2d 813 (Miss. 2005).

Where the State moved for a mistrial, no double jeopardy emanated from the first trial because a manifest necessity arose, same being the discovery by the State during direct examination, that its first witness (defendant's companion, charged as an accessory), was unrepresented by counsel. Said witness had made incriminating statements, it was his rights, not defendant's, that the State believed were violated, and there was no showing of harm to defendant or bad faith prosecutorial misconduct. Knox v. State, 912 So. 2d 1004 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 344, 2005 Miss. LEXIS 686 (Miss. 2005).

Defendant cited seven instances of misconduct by the State in its closing argument, including references to the victim's family and their attendance at the trial, the State's actions as the "last voice" for the victim, references to the victim's last thoughts, and the grief of the victim's family members. However, the trial court alleviated any prejudice in properly sustaining the objections of counsel and admonishing the jury and the appellate court could not say that the improper arguments led to a verdict that was based upon prejudice and not upon the evidence so as to have justified a mistrial. Smith v. State, 911 So. 2d 541 (Miss. Ct. App. 2004), writ of certiorari denied by 920 So. 2d 1008, 2005 Miss. LEXIS 634 (Miss. 2005).

Only motions defendant made at trial were a motion for a mistrial and a motion to dismiss based on the State's failure to disclose the past criminal history of a confidential informant. As such, the appellate court would consider only defendant's post-trial motion for a new trial, but not his assertion that his motion for a directed verdict was improperly denied. Dunlap v. State, 883 So. 2d 145 (Miss. Ct. App. 2004), writ of certiorari dismissed by 893 So. 2d 1061, 2005 Miss. LEXIS 135 (Miss. 2005).

Trial court did not err in failing to grant a mistrial when the prosecution commented on defendant's failure to call a certain witness. The witness was not equally available to the prosecution, and therefore, the prosecution had every right to comment on defendant's failure to call him. Bright v. State, 894 So. 2d 590 (Miss. Ct. App. 2004), writ of certiorari denied by 893 So. 2d 1061, 2005 Miss. LEXIS 136 (Miss. 2005).

Defendant's attorney argued that a detective's testimony amounted to an improper opinion as to defendant's guilt and that a mistrial should be declared. The trial judge did not abuse his discretion when he denied the motion for a mistrial because the trial judge observed that an officer in every case made a determination as to who to charge and because he found that there was no prejudicial inference that the jury should convict defendant. Young v. State, — So. 2d —, 2004 Miss. LEXIS 588 (Miss. May 27, 2004), opinion withdrawn by, substituted opinion at 891 So. 2d 813, 2005 Miss. LEXIS 40 (Miss. Jan. 20, 2005).

Defendant contended that the State had erred in mentioning other criminal acts during voir dire where a prospective juror had replied that as a former deputy, he had arrested defendant (the nature of the offense was not stated), and that the State had erred in referring to a similar crime defendant might have committed during its opening argument. As to the former, defendant did not object until the conclusion of voir dire, and as to the latter, while counsel approached the bench, counsel did not specifically state his objection on the record; while any prejudice was negligible, defendant waived both alleged errors and his motion for a mistrial was properly denied. Clayton v. State, 893 So. 2d 246 (Miss. Ct. App. 2004), writ of certiorari denied by 893 So. 2d 1061, 2005 Miss. LEXIS 101 (Miss. 2005).

Trial court properly denied defendant's motion for a mistrial after juror revealed in voir dire that defendant was incarcerated. The trial judge found no prejudice because it would be obvious to any potential juror that defendant had been arrested; it would also be reasonable for a juror to assume defendant would have been incarcerated at some point. McDonald v. State, 881 So. 2d 895 (Miss. Ct. App. 2004).

Defendant's conviction for the sale of cocaine and his enhanced 40-year sentence were both proper where the trial court properly denied defendant's request for a mistrial based on an agent's testimony mentioning other transactions, because of the defense's refusal to allow the trial court to grant the limiting instruction, and the trial court immediately sustained defendant's objection. Easter v. State, 878 So. 2d 10 (Miss. 2004).

Trial court did not err in declaring a mistrial in an armed robbery case because, by the time a Batson challenge was raised, other jurors in the case had already been dismissed; jeopardy did not attach because the record indicated that the jury had not been sworn, despite a trial court's order that stated otherwise. Gaskin v. State, 873 So. 2d 965 (Miss. 2004).

Trial court did not err in denying defendant's motion for a mistrial based on testimony regarding defendant's dishonorable discharge from the military because defense counsel "opened the door" to the testimony during cross-examination. Schuck v. State, 865 So. 2d 1111 (Miss. 2003).

In defendant's trial for unlawfully taking possession of a motor vehicle, an identifying witness's statement that the witness remembered defendant well, even two years later, because the witness "could have got blasted that night," was not grounds for a mistrial, because the trial court quickly instructed the jury to disregard the statement, sought assurances that all jurors could set the remark aside, and because the isolated remark was not considered to have done serious and irreparable harm to the fundamental fairness of the trial. Parks v. State, 859 So. 2d 1084 (Miss. Ct. App. 2003).

Where defendant was tried for the sale of cocaine in a church zone, and an officer in testimony referred to defendant's codefendant (whose case was severed) as being a "Colombian," any prejudicial error, from the fact that Colombia was a country where there are known drug cartels, was harmless, in light of other evidence that overwhelmingly supported the jury's verdict; defendant was not entitled to a mistrial. Williams v. State, 856 So. 2d 571 (Miss. Ct. App. 2003), writ of certiorari denied en banc by 860 So. 2d 1223, 2003 Miss. LEXIS 816 (Miss. 2003).

Trial court did not abuse its discretion in failing to sua sponte grant a mistrial; the trial court granted defendant's request to strike a witness's statement and took appropriate steps to instruct the jury, defendant did not request a mistrial or a continuance, and the trial court did not find it necessary to grant a mistrial sua sponte. Williams v. State, 854 So. 2d 1077 (Miss. Ct. App. 2003).

Trial court did not err in refusing to grant defendant's motion for a mistrial because the unresponsive statement of a witness to the prosecutor's question of whether defendant "acted crazy" did not warrant a mistrial, and the trial court admonished the jury, which was sufficient under the circumstances. Martin v. State, 854 So. 2d 1004 (Miss. 2003).

Trial court did not err in not granting defendant a mistrial after the district attorney referred to defendant as a "predator" in closing argument; the prosecutor's comments were not prejudicial to the extent that a mistrial was warranted. Piercy v. State, 850 So. 2d 219 (Miss. Ct. App. 2003).

In a capital murder case, a mistrial was not warranted where the trial court instructed the jury to disregard a witness's statements that defendant had previously been in the penitentiary. Howard v. State, 853 So. 2d 781 (Miss. 2003), writ of certiorari denied by 540 U.S. 1197, 124 S. Ct. 1455, 158 L. Ed. 2d 113, 2004 U.S. LEXIS 1327, 72 U.S.L.W. 3537 (2004).

Defendant was not entitled to a mistrial after a venire member stated in voir dire that this was defendant's second capital murder trial, as there was no showing of misconduct that resulted in substantial or irreparable harm to his case; defendant had been granted an additional peremptory challenge, but never challenged this prospective juror. Shelton v. State, 853 So. 2d 1171 (Miss. 2003).

Where a police witness testified that defendant "stopped talking" after admitting having been in the city where a murder occurred, defendant was not entitled to a mistrial based on an alleged inappropriate comment on his right to remain silent under the Fifth Amendment or Miss. Const. art. 3, § 26; merely stating that defendant stopped talking did not rise to the level of justifying a mistrial. Shelton v. State, 853 So. 2d 1171 (Miss. 2003).

Trial court did not abuse its discretion in denying defendant's motion for a mistrial following comments by a prosecution witness calling defendant "gay"; trial court's instruction to the jury to disregard the comments cured any error. Osborne v. State, 843 So. 2d 99 (Miss. Ct. App. 2003).

Court rejected defendant's claim that a police officer's testimony was inadmissible under Miss. R. Evid. 701; although the officer referred to the substance found in defendant's residence as a controlled substance, because the trial court gave the jury a curative instruction, there was no abuse of discretion in the trial court's refusal to grant a mistrial pursuant to Miss. Unif. Cir. & County Ct. Prac. R. 3.12 on this basis. Mooneyham v. State, 842 So. 2d 579 (Miss. Ct. App. 2002), writ of certiorari denied by 2003 Miss. App. LEXIS 394 (Miss. Ct. App. Feb. 27, 2003), writ of certiorari denied by 837 So. 2d 771, 2003 Miss. LEXIS 223 (Miss. 2003).

In a prosecution for burglary and rape, the trial court did not err in failing to sua sponte declare a mistrial where the prosecutor asked a police officer whether he needed permission to draw a blood sample from the defendant and the officer unresponsively answered "It is my understanding that the suspect was previously convicted for a sexual offense . . ." before he was interrupted by the court and the jury was instructed to disregard his answer. Reed v. State, 764 So. 2d 511 (Miss. Ct. App. 2000).

In a prosecution for the sale of cocaine, the court did not err when it denied the defendant's request for a mistrial after the state asked three questions that referred to the substance in an evidence envelope as cocaine when there was as yet no evidence introduced making that identification where, later during the trial, a witness from a crime laboratory who tested the substance identified it as cocaine. Brooks v. State, 761 So. 2d 944 (Miss. Ct. App. 2000).

In a prosecution for grand larceny and false pretense, the court properly denied a mistrial where the police chief improperly testified with regard to the exchange receipt and a store's business practices, but the trial court sustained the defense counsel's objection, and instructed the jury to disregard the police chief's testimony. Anderson v. State, 738 So. 2d 253 (Miss. Ct. App. 1998).

Rule 3.13. Assessment of costs upon settlement of case.

The court may assess all costs, including fees and mileage of jurors who have been required to be present for the trial, against whichever party litigant or attorney it deems appropriate, for failure of an attorney to try the case or for failure to notify the court of settlement of a case before 5:00 P.M. on the day before the trial.

JUDICIAL DECISIONS

Cost of jury.
Mistrial.

Cost of jury.

Trial court did not abuse its discretion in assessing jury costs as sanctions against a defendant, whom the court found to be in direct criminal contempt for unprofessional and contumacious behavior during the trial of defendant's client which resulted in a mistrial. The court imposed $25 per juror costs for each of the jurors who participated in voir dire and for each of the petit jurors who appeared for trial. Minka v. State, 234 So. 3d 353 (Miss. 2017).

Rule provided the trial court authority to assess an attorney the cost of the jury, based on his finding that, because of the attorney's refusal to comply with the rulings of the court, the cause of action against his client could not proceed to trial as scheduled; nothing in the rule itself or the supreme court's interpretation precludes its application to criminal trials. Harris v. State, 224 So. 3d 76 (Miss. 2017).

Mistrial.

The trial judge did not abuse his discretion in granting a mistrial nor in assessing the cost of the jurors' pay for the day of jury duty where the judge determined that defense counsel in a criminal proceeding purposely set out to, and did, obtain a mistrial after his motion for a continuance was denied. Crosby v. State, 760 So. 2d 725 (Miss. 2000).

Rule 3.14. Note taking by jurors.

1. *Note taking permitted in the discretion of the court.* The court may, in its discretion, permit jurors to take written notes concerning testimony and other evidence. If the court permits jurors to take written notes, jurors shall have access to their notes during deliberations. Immediately after the jury has

rendered its verdict, all notes shall be collected by the bailiff or clerk and destroyed.

2. *Instructions.* The court shall instruct the jury as to whether note taking will be permitted. If the court permits jurors to take written notes, the trial judge shall give both a preliminary instruction and an instruction at the close of all the evidence on the appropriate use of juror notes. These instructions shall be given in the following manner.

(a) Preliminary Instruction: Note Taking Forbidden

You may not take notes during the course of the trial. There are several reasons for this. It is difficult to take notes and, at the same time, pay attention to what a witness is saying. Further, in a group the size of yours, certain persons will take better notes than others will, and there is a risk that jurors who do not take good notes will depend on jurors who do. The jury system depends upon all jurors paying close attention and arriving at a decision. I believe that the jury system works better when the jurors do not take notes.

You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

(b) Preliminary Instruction: Note Taking Permitted

If you would like to do so, you may take notes during the course of the trial. On the other hand, you are not required to take notes if you prefer not to do so. Each of you should make your own decision about this. If you decide to take notes, be careful not to get so involved in note taking that you become distracted from the ongoing proceedings.

Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you take notes or not, each of you must form and express your own opinion as to the facts of this case. An individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors.

You will notice that we do have an official court reporter making a record of the trial; however, we will not have typewritten transcripts of this record available for your use in reaching a decision in this case.

(c) Use of Notes During Deliberations.

Jury Instruction # ____________

Members of the Jury, shortly after you were selected I informed you that you could take notes and I instructed you as to the appropriate use of any notes that you might take. Most importantly, an individual juror's notes may be used by that juror only and may not be shown to or shared with other jurors. Notes are only a memory aid and a juror's notes may be used only as an aid to refresh that particular juror's memory and assist that juror in recalling the actual testimony. Each of you must rely on your own independent recollection of the proceedings. Whether you took notes or not, each of you must form and express your own opinion as to the facts of this case. Be aware that during the course of your deliberations there might be the temptation to allow notes to cause certain portions of the evidence to receive undue emphasis and receive attention out of proportion to the entire evidence. But a juror's memory or impression is entitled to no greater weight just because he or she took notes, and you should not be influenced by the notes of other jurors.

Thus, during your deliberations, do not assume simply because something appears in your notes that it necessarily took place in court. (Adopted effective April 18, 2002.)

JUDICIAL DECISIONS

Untimely objection.

Because defense counsel did not object to the timing of an instruction regarding the jurors taking notes in a drug case, the issue was not preserved for appellate review. Vardaman v. State, 966 So. 2d 885 (Miss. Ct. App. 2007).

Rule 4.01. Cost deposit.

A cost deposit shall be made with the clerk of court at the time of the filing of the complaint in the amount set forth under section 25-7-13 of the Mississippi Code. (Adopted effective May 1, 1995; amended effective June 29, 1995; amended March 22, 2001; amendment suspended April 12, 2001; March 22, 2001 amendment repealed October 11, 2007; amended effective December 1, 2015; amended effective July 1, 2017.)

Editor's Note — A former Rule 4.01, titled: "Scope of civil rules," was deleted effective July 1, 2017. The rule set out above formerly appeared as Rule 4.02. It was renumbered as this rule effective July 1, 2017.

By order dated March 15, 2001, the Supreme Court of Mississippi amended Rule 4.02 [now Rule 4.01] of the Uniform Rules of Circuit and County Courts, effective March 22, 2001, to read as follows:

"1. A cost deposit shall be made with the clerk of court at the time of the filing of the complaint in the amount of $75.00.

"2. The plaintiff shall make an additional cost deposit of $1,000.00 with the clerk of the court at the time of filing of a complaint pursuant to Miss. Code Ann. § 11-27-81 claiming the right of immediate possession of property sought to be condemned."

[**Note:** The March 22, 2001 amendment to Rule 4.02 [now Rule 4.01] which added paragraph 2 requiring an additional cost deposit of $1,000.00 on filing of a complaint pursuant to Miss. Code. Ann. § 11-27-81 has been suspended pending further order of the Supreme Court, by order entered April 12, 2001.]

By order dated April 12, 2001, the Supreme Court of Mississippi suspended the amendment to Rule 4.02 [now Rule 4.01] pending further order of the court.

By order dated October 5, 2007, the Supreme Court of Mississippi repealed the March 22, 2001, amendment to Rule 4.02 [now Rule 4.01].

Rule 4.02. Motion practice.

The provisions of this rule shall apply to all written motions.

1. The original of each motion, and all affidavits and other supporting evidentiary documents shall be filed with the clerk in the county where the action is docketed. The moving party at the same time shall mail a copy thereof to the judge presiding in the action at the judge's mailing address. A proposed

order shall accompany the court's copy of any motion which may be heard *ex parte* or is to be granted by consent. Responses and supporting evidentiary documents shall be filed in the same manner.

2. In circuit court a memorandum of authorities in support of any motion to dismiss or for summary judgment shall be mailed to the judge presiding over the action at the time that the motion is filed. Respondent shall reply within ten (10) days after service of movant's memorandum. A rebuttal memorandum may be submitted within five (5) days of service of the reply memorandum. Movants for summary judgment shall file with the clerk as a part of the motion an itemization of the facts relied upon and not genuinely disputed and the respondent shall indicate either agreement or specific reasons for disagreement that such facts are undisputed and material. Copies of motions to dismiss or for summary judgment sent to the judge shall also be accompanied by copies of the complaint and, if filed, the answer.

3. Accompanying memoranda or briefs in support of other motions are encouraged but not required. Where movant has served a memorandum or brief, respondent may serve a reply within ten (10) days after service of movant's memorandum or brief. A rebuttal memorandum or brief may be served within five (5) days of service of the reply memorandum.

4. No memorandum or brief required or permitted by this rule shall be filed with the clerk. Memoranda or briefs shall not exceed 25 pages in length. If any memorandum, brief or other paper submitted in support of a legal argument in any case cites or relies upon any authority other than a Mississippi or federal statute, Mississippi or federal Rule of Court, United States Supreme Court case, or a case reported in the Southern or Federal Reporter series, a copy of such authority must accompany the brief or other paper citing it.

5. All dispositive motions shall be deemed abandoned unless heard at least ten days prior to trial. (Adopted effective May 1, 1995; amended May 23, 2002; amended effective July 1, 2017.)

Editor's Note — A former Rule 4.02, titled: "Cost deposit," was renumbered Rule 4.01, effective July 1, 2017. The rule set out above formerly appeared as Rule 4.03 and was renumbered as this rule effective July 1, 2017.

JUDICIAL DECISIONS

Under former URCCC 4.03.
— Abandoned motion.
— Memorandum of authorities.
— Timeliness.

Under former URCCC 4.03.

Appellant's motion for a continuance was untimely, as she did not file it until three days before the hearing, almost three months after appellee filed its motion, and in any event, the denial of her motion was not an abuse of discretion; appellant had two years to conduct discovery but never issued a notice of deposition, and her claim that an employee of appellee was not made available was not supported by the record. Robinson v. Robinson Prop. Grp. Corp., — So. 3d —, 2019 Miss. App. LEXIS 11 (Miss. Ct. App. Jan. 8, 2019), writ of certiorari dismissed by 2019 Miss. LEXIS 257 (Miss. July 18, 2019).

— Abandoned motion.

Finding in favor of the business owner in the husband's and wife's action after the husband was shot by his sister on the business owner's property was appropriate under Miss. Unif. Cir. & Cty. R. 4.03

because the husband and wife provided no additional authority with which to prove that the business owner's omission of the itemization of undisputed facts should have been fatal to her request for summary judgment; while the summary judgment motion itself did not specifically itemize undisputed facts, the appellate court found from the record that the business owner did attach relevant excerpts from the pleadings, discovery, and depositions, which described undisputed facts. Otts v. Lynn, 955 So. 2d 934 (Miss. Ct. App. 2007).

Grant of summary judgment in favor of the company in a wrongful death action was proper where products liability law limited itself to imposing liability on entities engaged in the actual production or sale of goods, Miss. Code Ann. § 11-1-63(a); further, the beneficiaries abandoned their motion for leave to amend because they permitted over three and on-half months to pass without making any effort to pursue a ruling on the motion in face of knowledge that the trial court had taken the summary judgment motion filed against them under advisement, Miss. Unif. Cir. & County Ct. Prac. R. 4.03(1), 2.04. Harrison v. B.F. Goodrich Co., 881 So. 2d 288 (Miss. Ct. App. 2004), writ of certiorari denied by 882 So. 2d 772, 2004 Miss. LEXIS 1111 (Miss. 2004).

— Memorandum of authorities.

Although there was a failure to comply with this rule based on a failure to simultaneously file a memorandum of authorities with a summary judgment, the purposes of the rule were still fulfilled, and the delay did not unfairly sandbag the circuit court or force the judge to ferret through the record. Even with the filing delay, there was ample time prior to the hearing to reply to the memorandum; moreover, there was no unfair surprise by the subsequent filing of the memorandum of authorities since the summary judgment motion had already been filed. Thornton v. Big M Transp. Co., 146 So. 3d 393 (Miss. Ct. App. 2014).

— Timeliness.

Circuit court did not abuse its discretion in granting a nurse's motion to dismiss a couple's medical-malpractice action for failure to prosecute because the couple failed to begin their own discovery until approximately two years after the nurse answered the amended complaint, and the couple only did so after the nurse filed her motion to dismiss; the record clearly reflected the couple began discovery as a reactionary measure to the nurse filing her motion to dismiss. Havard v. Sumrall, 250 So. 3d 1282 (Miss. Ct. App. 2017), writ of certiorari denied by 250 So. 3d 1268, 2018 Miss. LEXIS 354 (Miss. Aug. 9, 2018), writ of certiorari denied en banc by 2018 Miss. LEXIS 351 (Miss. Aug. 9, 2018).

Where the trial court dismissed appellant's medical-malpractice claim with prejudice for failure to prosecute, its finding of delay and contumacious conduct was supported by evidence that appellant allowed the case to languish for over a year, repeatedly failed to submit timely and sufficient responses to discovery, submitted untimely discovery requests and response to the motion to dismiss, and did not disclose the basis for her claim until over two years after the responses were requested. Cornelius v. Benefield, 168 So. 3d 1028 (Miss. Ct. App. 2013), writ of certiorari denied by 140 So. 3d 940, 2014 Miss. LEXIS 293 (Miss. June 12, 2014).

Dismissal of the patient's medical-negligence action under Miss. R. Civ. P. 41(b) was inappropriate even though the record reflected no written motions by the patient requesting additional discovery time and the record showed that the patient failed to reply to a motion to dismiss within the requisite period, because there was no clear record of actual prejudice caused to the physician or medical center, or even that of presumptive prejudice, and the delays were solely the result of the negligence of plaintiff's counsel. Holder v. Orange Grove Med. Specialties, P.A., 54 So. 3d 244 (Miss. Ct. App. 2010), reversed by 54 So. 3d 192, 2010 Miss. LEXIS 640 (Miss. 2010).

Medical malpractice complaint was properly dismissed with prejudice because, when plaintiffs (1) did not submit answers to interrogatories until 435 days past the deadline in Miss. R. Civ. P. 33(b)(3), (2) did not begin discovery until almost a year past the deadline in Miss.

Unif. Cir. & Cty. R. 4.04(A), and (3) did not reply to the motion to dismiss within ten days, under Miss. Unif. Cir. & Cty. R. 4.03(2), it was unnecessary to show plaintiffs' contumacious conduct, prejudice from plaintiffs' unreasonable delay was presumed, even though defendants did not show witnesses' fading memories and no aggravating factors were present, and lesser sanctions would not suffice, since the case was not an isolated incident of one missed deadline or a short, delayed response. Holder v. Orange Grove Med. Specialties, P.A., 54 So. 3d 192 (Miss. 2010).

Where a firefighter did not file his response to the city's summary judgment motion until 18 days after the motion was personally served, the response was not timely. Pratt v. City of Greenville, 918 So. 2d 81 (Miss. Ct. App. 2006).

Rule 4.03. Discovery deadlines and practice.

A. All discovery must be completed within ninety days from service of an answer by the applicable defendant. Additional discovery time may be allowed with leave of court upon written motion setting forth good cause for the extension. Absent special circumstances the court will not allow testimony at trial of an expert witness who was not designated as an expert witness to all attorneys of record at least sixty days before trial.

B. When responding to discovery requests, interrogatories, requests for production, and requests for admission, the responding party shall, as part of the responses, set forth immediately preceding the response the question or request to which such response is given. Responses shall not be deemed to have been served without compliance to this subdivision.

C. No motion to compel shall be heard unless the moving party shall incorporate in the motion a certificate that movant has conferred in good faith with the opposing attorney in an effort to resolve the dispute and has been unable to do so. Motions to compel shall quote verbatim each contested request, the specific objection to the request, the grounds for the objection and the reasons supporting the motion. (Amended effective July 1, 2017.)

Editor's Note — A former Rule 4.03, titled: "Motion practice," was renumbered Rule 4.02, effective July 1, 2017. The rule set out above formerly appeared as Rule 4.04 and was renumbered as this rule effective July 1, 2017.

JUDICIAL DECISIONS

Under former URCCC 4.04.
— In general.
— Failure to comply.
— Special circumstances.
— Timeliness.

Under former URCCC 4.04.

— In general.

In this medical malpractice case, plaintiffs never designated an expert prior to the summary judgment hearing, and only provided an expert's affidavit as part of their motion to alter or amend the grant of summary judgment, and thus they failed to satisfy their burden of proving the components of a claim sufficient to survive summary judgment; the court knows of no rule stating that an expert does not have to be designated until 60 days before trial, and the rule only provides that an expert must, at the very least, be designated by that point. Crutchfield v. Magnolia Reg'l Health Ctr., 249 So. 3d 445 (Miss. Ct. App. 2018).

Circuit court did not abuse its discretion in granting a nurse's motion to dismiss a couple's medical-malpractice action for failure to prosecute because the couple failed to begin their own discovery until approximately two years after the nurse answered the amended complaint, and the couple only did so after the nurse filed her motion to dismiss; the record clearly reflected the couple began discovery as a reactionary measure to the nurse filing her motion to dismiss. Havard v. Sumrall, 250 So. 3d 1282 (Miss. Ct. App. 2017), writ of certiorari denied by 250 So. 3d 1268, 2018 Miss. LEXIS 354 (Miss. Aug. 9, 2018), writ of certiorari denied en banc by 2018 Miss. LEXIS 351 (Miss. Aug. 9, 2018).

Expert supplementation did not violate subsection (A) because it was submitted more then sixty days before the scheduled trial date; however, the trial court did not abuse its discretion in striking evidence because due to the complexity of the issues in the case, allowing a new theory of liability only four months prior to the scheduled trial would be prejudicial. Singley v. Trinity Highway Prods., LLC, 180 So. 3d 708 (Miss. Ct. App. 2015), writ of certiorari denied en banc by 181 So. 3d 1010, 2016 Miss. LEXIS 11 (Miss. Jan. 7, 2016).

Expert's testimony as to matters contained in his supplemental report was properly excluded as the expert's late submission of his expert report violated Miss. Unif. Cir. & Cty. R. 4.04(A). Howell v. Holiday, 155 So. 3d 839 (Miss. Ct. App. 2013).

Trial court did not err in excluding a witness as a late-designated expert as the witness was not designated in a timely manner. While the trial was continued two months, resulting in the expert being identified 73 days prior to trial, the continuance was not intended to allow either party to designate additional experts. O'Keeffe v. Biloxi Casino Corp., 76 So. 3d 726 (Miss. Ct. App. 2011), writ of certiorari denied by 78 So. 3d 906, 2012 Miss. LEXIS 5 (Miss. 2012).

Medical malpractice complaint was properly dismissed with prejudice because, when plaintiffs (1) did not submit answers to interrogatories until 435 days past the deadline in Miss. R. Civ. P. 33(b)(3), (2) did not begin discovery until almost a year past the deadline in Miss. Unif. Cir. & Cty. R. 4.04(A), and (3) did not reply to the motion to dismiss within ten days, under Miss. Unif. Cir. & Cty. R. 4.03(2), it was unnecessary to show plaintiffs' contumacious conduct, prejudice from plaintiffs' unreasonable delay was presumed, even though defendants did not show witnesses' fading memories and no aggravating factors were present, and lesser sanctions would not suffice, since the case was not an isolated incident of one missed deadline or a short, delayed response. Holder v. Orange Grove Med. Specialties, P.A., 54 So. 3d 192 (Miss. 2010).

Pursuant to Miss. Unif. Cir. & Cty. R. 4.04(A), supplemental expert testimony regarding a hospital's standard of care was properly excluded as untimely; the report was submitted just over one month before trial and caused prejudice to the hospital, which would not have had adequate time before trial to review the evidence. Paige v. Miss. Baptist Med. Ctr., 31 So. 3d 637 (Miss. Ct. App. 2009).

— Failure to comply.

Medical malpractice case could not survive summary judgment because there was no witness designation or affidavit in support of the prima facie case; the failure to designate an expert witness prior to the hearing for summary judgment overshadowed the contention that the trial court's mere consideration of summary judgment was premature. Reliance on this rule to support the argument that designation of an expert witness was not yet required was improper. Carnathan v. Rogers, 218 So. 3d 274 (Miss. Ct. App. 2017).

Trial court erred in allowing two agents to testify where the Mississippi Bureau of Narcotics had not timely disclosed them as expert witnesses, as required under Miss. Unif. Cir. & Cty. R. 4.04, and the Bureau failed to show that special circumstances existed for the untimely designations. Six Thousand Dollars ($6,000) v. State ex rel. Miss. Bureau of Narcotics, 179 So. 3d 1 (Miss. 2015).

Appellants' medical-malpractice suit was properly dismissed on summary judgment because they failed to produce expert testimony to support their claim; the fact that no trial date had been set in the case did not mean that the 60-day deadline for designating an expert never expired. Johnson v. Pace, 122 So. 3d 66 (Miss. 2013).

Trial court properly granted summary judgment to defendant on the basis that plaintiff failed to give defendant advance notice of the opinion testimony of plaintiff's expert so as to allow defendant to meaningfully cross-examine the expert at his deposition given that plaintiff's failure to designate the expert as an expert witness clearly constituted a discovery violation, and plaintiff had not provided any reason why she was unable to formally designate the expert as an expert witness and comply with the scheduling order. Buckley v. Singing River Hosp., 146 So. 3d 365 (Miss. Ct. App. 2013).

Where the trial court dismissed appellant's medical-malpractice claim with prejudice for failure to prosecute, its finding of delay and contumacious conduct was supported by evidence that appellant allowed the case to languish for over a year, repeatedly failed to submit timely and sufficient responses to discovery, submitted untimely discovery requests and response to the motion to dismiss, and did not disclose the basis for her claim until over two years after the responses were requested. Cornelius v. Benefield, 168 So. 3d 1028 (Miss. Ct. App. 2013), writ of certiorari denied by 140 So. 3d 940, 2014 Miss. LEXIS 293 (Miss. June 12, 2014).

Trial court did not err in granting a hospital's motion for summary judgment and dismissing a contractor's employee's negligence action with prejudice because the employee committed a discovery violation by failing to designate a physician as an expert witness, supplement her interrogatories, and comply with the scheduling order; the employee fell when exiting a hospital elevator. Buckley v. Singing River Hosp., 99 So. 3d 248 (Miss. Ct. App. Oct. 2, 2012), opinion withdrawn by, substituted opinion at 146 So. 3d 365, 2013 Miss. App. LEXIS 691 (Miss. Ct. App. Oct. 15, 2013).

Where, despite a timely request for discovery from the defense, a motion to compel discovery, and a motion to continue the case, the State did not release requested information on a confidential informant who was to be the key prosecution witness less than twenty-four hours before the start of the trial, defendant was entitled to a new trial. The trial court's reluctance to enforce the applicable rules of discovery, including Miss. Unif. Cir. & Cty. R. 9.04(A) and Miss. Unif. Cir. & Cty. R. 4.04(A), was reversible error. Patterson v. State, — So. 3d —, 2011 Miss. App. LEXIS 262 (Miss. Ct. App. May 10, 2011), opinion withdrawn by, substituted opinion at 93 So. 3d 43, 2011 Miss. App. LEXIS 752 (Miss. Ct. App. Dec. 6, 2011).

— Special circumstances.

In a case in which appellant contested the forfeiture of $6,000 seized by the State, the trial court, which noted that special circumstances were present, did not abuse its discretion by permitting the testimony of untimely designated expert witnesses. In addition, defendant did not request a continuance. Six Thousand Dollars ($6,000) v. State ex rel. Miss. Bureau of Narcotics, 179 So. 3d 7 (Miss. Ct. App. 2014), affirmed by 179 So. 3d 1, 2015 Miss. LEXIS 444 (Miss. Aug. 27, 2015).

Trial court did not err in allowing an employer to supplement the designation of its accident reconstruction expert three and a half weeks before the trial date as supplementation was required to address the widow's own late designation of her expert and a change in the widow's theory of the case occurring seventy-five days before trial. Martin v. B&B Concrete Co., 71 So. 3d 611 (Miss. Ct. App. 2011), writ of certiorari denied by 71 So. 3d 1207, 2011 Miss. LEXIS 487 (Miss. 2011).

Because patient did not fully designate any expert witness until his January 30, 2008, filing of his supplemental discovery responses and, to be in compliance with Miss. Unif. Cir. & Cty. R. 4.04(A), the patient needed to designate an expert for trial by December 10, 2007, summary judgment was properly granted on his medical negligence claim against the doctor. Johnson v. Lee, 17 So. 3d 1140 (Miss. Ct. App. 2009).

Where plaintiffs, a father and a son, claimed the trial court erred in allowing defendants, two county attorneys, a sheriff, and the sheriff's deputy, to file discovery requests after the expiration of the time allowed by Miss. Unif. Cir. & Cty. R. 4.04 because defendants did not file a written motion for an extension and because defendants had drafted an “Agreed Order” that was forwarded to the court, but to which plaintiffs never agreed, the argument was rejected because plaintiffs had not responded to defendants' discovery request until after the court entered its scheduling order, and the fact that the order was labeled as “agreed” was inconsequential; the trial court had considerable discretion with regard to scheduling orders. Blake v. Wilson, 962 So. 2d 705 (Miss. Ct. App. 2007).

Trial court erred in not granting a trial continuance to defendant company in a personal injury suit because the untimely designation of plaintiff's expert's 59 (versus 60) days prior to trial, the addition of a third theory of liability as to the company one week before trial, and the last-minute deposition of the expert, had the effect of working a severe prejudice on the company which could have been avoided had the trial court allowed a reasonable continuation of the trial. Int'l Paper Co. v. Townsend, 961 So. 2d 741 (Miss. Ct. App. 2007), writ of certiorari denied by 962 So. 2d 38, 2007 Miss. LEXIS 424 (Miss. 2007).

Where an invitee's responses to a motion to compel did not comply with Miss. R. Civ. P. 33, the invitee sought late discovery in violation of Miss. Unif. Cir. & County Ct. Prac. R. 4.04, and did not show good cause for failing to prosecute after two notices of dismissal under Miss. R. Civ. P. 41(d), the trial court properly dismissed the lawsuit and denied a motion for reconsideration. Guidry v. Pine Hills Country Club, Inc., 858 So. 2d 196 (Miss. Ct. App. 2003).

In parents' action against a doctor for the wrongful death of their unborn child where the trial centered on a battle of experts, the trial judge did not abuse his discretion in denying the parents' the opportunity to add another expert, as the designation of the expert exceeded the discovery deadline by more than seven months, the only excuse being that finding a local expert was more difficult than had been anticipated. Venton v. Beckham, 845 So. 2d 676 (Miss. 2003).

The trial court did not abuse its discretion when it denied the plaintiff estate's motion to compel where its requests for admissions and interrogatories were filed 169 days after the defendant filed her answer and the estate failed to demonstrate any prejudice from the trial court's ruling. Tatum v. Barrentine, 797 So. 2d 223 (Miss. 2001).

The circuit court did not err in refusing to allow discovery to be conducted outside the 90-day period prescribed by the rule where the plaintiff filed its first set of requests for production 169 calendar days after the defendant filed her answer and the plaintiff failed to demonstrate any prejudice to its case as a result of the denied motion, there being no evidence in the record that the plaintiff had not received the information it complained of needing. Tatum v. Barrentine, — So. 2d —, 2001 Miss. LEXIS 73 (Miss. Mar. 29, 2001), opinion withdrawn by, substituted opinion at 797 So. 2d 223, 2001 Miss. LEXIS 269 (Miss. Oct. 18, 2001).

— Timeliness.

Dismissal of the patient's medical-negligence action under Miss. R. Civ. P. 41(b) was inappropriate pursuant to Miss. Unif. Cir. & Cty. R. 4.04(A) even though the record reflected no written motions by the patient requesting additional discovery time and the record showed that the patient failed to reply to a motion to dismiss within the requisite period, because there was no clear record of actual prejudice caused to the physician or medical center, or even that of presumptive prejudice, and the delays were solely the result of the negligence of plaintiff's counsel. Holder v. Orange Grove Med. Specialties, P.A., 54 So. 3d 244 (Miss. Ct. App. 2010), reversed by 54 So. 3d 192, 2010 Miss. LEXIS 640 (Miss. 2010).

Rule 4.04. Jury selection process.

A. Peremptory jury challenges shall be exercised as follows:

1. The court shall consider all challenges for cause before the parties are required to exercise peremptory challenges.

2. Next, the plaintiff shall tender to the defendant a full panel of accepted jurors having considered the jury in the order in which they appear, having exercised any peremptory challenges desired.

3. Next, the defendant shall go down the juror list accepted by the plaintiff and exercise any peremptory challenge(s) to that panel.

4. Once the defendant exercises peremptory challenges to the panel tendered, the plaintiff shall then be required to again tender to the defendant a full panel of accepted jurors.

5. The above procedure shall be repeated until a full panel of jurors has been accepted by both sides.

6. Once the jury panel is selected, alternate jurors shall be selected following the procedure set forth above for selecting the jury panel.

B. Constitutional challenges to the use of peremptory challenges shall be made at the time each panel is tendered. (Amended April 18, 1995; amended effective July 1, 2017.)

Editor's Note — A former Rule 4.04, titled: "Discovery deadlines and practice," was renumbered Rule 4.03, effective July 1, 2017. The rule set out above formerly appeared as Rule 4.05 and was renumbered as this rule effective July 1, 2017.

JUDICIAL DECISIONS

Under former URCCC 4.05.
— Constitutionality.
— Jury selection outside court's presence.
— Peremptory challenge.

Under former URCCC 4.05.

— Constitutionality.

This rule does not supplant United States Supreme Court decisions on federal constitutional law; to the extent that this rule may be in conflict with such, it must fail. Lard v. State, — So. 2d —, 1999 Miss. App. LEXIS 519 (Miss. Ct. App. Aug. 10, 1999).

— Jury selection outside court's presence.

State supreme court criticized trial court's actions in directing lawyers to select the jury outside of the trial court's presence because the fact that the peremptory strikes portion of the jury selection was not held on the record posed significant problems in the consideration of defendant's Batson challenge on appeal. Under Miss. Unif. Cir. & Cty. R. 4.05B, constitutional challenges to the use of peremptory challenges were to be made at the time each panel was tendered, and the application of the rule required, at the time the peremptory strikes are made, the presence of the judge to rule on any challenge and the court reporter to record the arguments and rulings. Pruitt v. State, 986 So. 2d 940 (Miss. 2008), opinion withdrawn by, substituted opinion at 2008 Miss. LEXIS 342 (Miss. July 24, 2008).

— Peremptory challenge.

Misallocation of defendant's peremptory challenges did not affect a fundamental, substantive right because so long as the jury that sat was impartial, the fact that defendant had to pool his regular and alternate peremptory challenges to achieve that result did not mean his Sixth Amendment rights were violated; despite being selected in an irregular manner, the jury was a legal jury with the authority to render a verdict against defendant. Carr v. State, 190 So. 3d 1 (Miss. Ct. App. 2015).

Defendant made no assertion that his Sixth Amendment right to an impartial jury was violated due to the jury-selection process because he did not claim the jury was composed of incompetent jurors; defendant failed to show how the departure from that statute and rules regarding peremptory challenges affected his fundamental, substantive rights or otherwise led to a manifest miscarriage of justice. Carr v. State, 190 So. 3d 1 (Miss. Ct. App. 2015).

Rule 4.05. Interlocutory appeal from county court.

An appeal from an interlocutory order in county court may be sought in the Supreme Court as provided in Rule 5 of the Mississippi Rules of Appellate Procedure. (Adopted effective July 1, 2008; amended effective July 1, 2017.)

Editor's Note — A former Rule 4.05, titled: "Jury selection process," was renumbered Rule 4.04, effective July 1, 2017. The rule set out above formerly appeared as Rule 4.06 and was renumbered as this rule effective July 1, 2017.

JUDICIAL DECISIONS

Under former URCCC 4.06.
— Summary judgment.

Under former URCCC 4.06.

— Summary judgment.
Medical center's appeal of an order denying its motion for summary judgment on medical negligence claims did not violate the statute; Miss. Unif. Cir. & Cty. R. 4.06 (now Miss. Unif. Cir. & Cty. R. 4.05) and Miss. R. App. P. 5 conflict with § 11-51-79 regarding interlocutory appeals, and the court's rules trump statutory law. Jackson HMA, LLC v. Harris, 242 So. 3d 1 (Miss. 2018).

Rule 4.06. Rule for Jones, Lee and Rankin Counties Expedited Small Claims. [Omitted].

Editor's Note — A former Rule 4.06, titled: "Interlocutory appeal from county court," was renumbered Rule 4.05, effective July 1, 2017. The rule set out above formerly appeared as Rule 4.07 and was renumbered as this rule and omitted, effective July 1, 2017.

Rule 5.01. Appeals to be on the record/exceptions.

Except for cases appealed directly from justice court or municipal court, all cases appealed to circuit court shall be on the record and not a trial de novo. Direct appeals from justice court and municipal court shall be by trial de novo.

Cross References — Civil appeals from justice court to be governed by URCCC Rules 5.01, 5.04, 5.07, 5.08 and 5.09, see RJC 27.

JUDICIAL DECISIONS

Judicial review.
Where a city discharged an employee for directing a police dog towards a suspect who was resisting arrest, the civil service commission properly reinstated the employee because the testimony of the arresting officer and the police department's policies substantially supported the commission's finding that the use of the dog was not excessive force. City of Laurel v. Brewer, 919 So. 2d 217 (Miss. Ct. App. 2005).

Rule 5.02. Duty to make record.

In appeals on the record it is the duty of the lower court or lower authority (which includes, but is not limited to, state and local administrative agencies and governing authorities of any political subdivision of the state) to make and preserve a record of the proceedings sufficient for the court to review. Such record may be made with or without the assistance of a court reporter. The time and manner for the perfecting of appeals from lower authorities shall be as provided by statute.

Rule 5.03. Scope of appeals from administrative agencies.

On appeals from administrative agencies the court will only entertain an appeal to determine if the order or judgment of the lower authority:

1. Was supported by substantial evidence; or
2. Was arbitrary or capricious; or
3. Was beyond the power of the lower authority to make; or
4. Violated some statutory or constitutional right of the complaining party.

JUDICIAL DECISIONS

Role on review.
Illustrative cases.

Role on review.

Court of appeals misapprehended its burden of proof for an agency decision, under Miss. Unif. Cir. & County Ct. Prac. R. 5.03, by reversing a circuit court decision affirming a denial of a claimant's disability retirement benefits because there was conflicting medical evidence of disability but substantial evidence supporting the administrative decision. Thomas v. Public Employees' Ret. Sys., 995 So. 2d 115 (Miss. 2008).

Acting de novo is not the appellate court's role on review, and if the court upheld the decision that the employee was not disabled as a result of depression for disability retirement benefits purposes, the court would have been acting de novo. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

Illustrative cases.

Public Employees' Retirement System (PERS) Board of Trustees did not err in denying the claim of a deceased PERS member's sister because the member's husband was entitled to lifetime spousal survivor benefits, notwithstanding the fact he was convicted of aggravated driving under the influence in connection with the member's death; the husband did not willfully cause the member's death under the slayer statutes, and he had been married to the member for over one year. Hicks v. Public Employees' Ret. Sys. of Miss., — So. 3d —, 2019 Miss. App. LEXIS 479 (Miss. Ct. App. Oct. 1, 2019).

Decision of the Public Employees' Retirement System of Mississippi to deny an employee duty-related retirement benefits was based on substantial evidence and was not arbitrary of capricious because ample evidence supported its findings that the employee's condition was not disabling; the examining physicians, as well as an occupational therapist, did not believe that the employee's diagnosis was supported by medical findings. Public Emples. Ret. Sys. of Miss. v. Comardelle, 210 So. 3d 984 (Miss. Ct. App. 2015).

Decision of the Public Employees' Retirement System of Mississippi to deny an employee duty-related retirement benefits was based on substantial evidence and was not arbitrary of capricious because its conclusion that the employee was not permanently disabled was consistent with testimony from multiple healthcare providers; the employee's doctors failed to establish that her complaints were supported by medical findings, and she continued to work for five years after she twisted her ankle. Public Emples. Ret. Sys. of Miss. v. Comardelle, 210 So. 3d 984 (Miss. Ct. App. 2015).

Miss. Unif. Cir. & Cty. R. 5.03 and Miss. Code Ann. § 21-31-71 were not the applicable standards of review in an appeal because, while the case did involve an appeal from an administrative agency, the court was not reviewing a decision from the administrative agency. Fields v. City of Clarksdale, 133 So. 3d 373 (Miss. Ct. App. 2014).

Mississippi Public Employees Retirement System erred in denying a former state employee disability benefits, as a doctor's statements that she could not continue the tasks required of her job (walking long distances) due to severe foot pain and that she was at a maximum medical improvement was sufficient medical evidence under Miss. Code Ann. § 25-11-113(1)(a) (Supp. 2012) to show that she was physically incapacitated for the job she was employed to do, that it was likely permanent, and that she should be retired. Knight v. Public Emples. Ret. Sys. of Miss., 108 So. 3d 912 (Miss. Dec. 13, 2012).

Substantial evidence supported a factual determination by a county board of supervisors that appellant no longer possessed the qualifications to continue as a commissioner of a county water district because appellant no longer resided in the district, as required by Miss. Code Ann. § 19-5-171(1); thus, a vacancy existed. Lamey v. Bd. of Supervisors, 46 So. 3d 878 (Miss. Ct. App. 2010).

In case in which a wastewater services company challenged a utility authority's acceptance of another company's proposal for the operation and management of the authority's wastewater facilities, the services company argued unsuccessfully that the authority's decision was arbitrary and capricious when the authority's engineer evaluated the three "extras" in the winning company's proposal as having a market value of between $ 28,000 and $ 35,000 and by adjusting the services company's bid upward by $ 30,000. The services company did not cite any authority for its proposition that the authority's executive director was not in a position to make the estimates and to assign a market value. Wastewater Plant Serv. Co. v. Harrison County Util. Auth., 28 So. 3d 686 (Miss. Ct. App. 2010).

Disability Appeals Committee failed to point to any objective evidence in the record to indicate the nurse's fibromyalgia did not exist and did not contribute to her disabling condition. Wright v. Public Employees' Ret. Sys., 24 So. 3d 382 (Miss. Ct. App. 2009).

Court could not see how the Disability Appeals Committee (DAC) could base its 2003 denial on its conclusion that the nurse was treated optimally, and turn around in 2007 and claim the same report from the psychiatrist illustrated the nurse did not receive adequate treatment for her illness and needed to be optimized; the psychiatrist offered no new findings to the DAC in 2007 and it reviewed the same report as it had earlier in 2003. Furthermore, these inconsistent findings did not concern mere collateral matters, but instead, these contradictory conclusions formed the main bases the DAC relied upon in 2003 and on remand in 2007 to deny the nurse's claim; the DAC's puzzling contradictory analysis left the impression that its decision was indeed arbitrary and without support of substantial, objective evidence. Wright v. Public Employees' Ret. Sys., 24 So. 3d 382 (Miss. Ct. App. 2009).

While the court found that the Public Employees' Retirement System's decision to deny benefits under Miss. Code Ann. § 25-11-113(1)(a) regarding an employee's physical condition was supported by substantial evidence, the court was unable to do so with regard to her mental condition, for purposes of Miss. Unif. Cir. & County Ct. Prac. R. 5.03. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

Primary issue before the court was not whether there was evidence to support the employee's disability, but whether there was substantial evidence to support the finding that she was not disabled, for disability retirement benefit determination under Miss. Code Ann. § 25-11-113(1)(a). Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

Public Employees' Retirement System's decision to deny benefits under Miss. Code

Ann. § 25-11-113(1)(a) with regard to the employee's anxiety and depression was not supported by substantial evidence; the disability appeals committee relied on the fact that the employee had not been evaluated or treated by a psychiatrist or psychologist, but this was improper, and regardless of whether the diagnosis was secondary, the employee's primary physician stated that she was disabled as a result of depression and anxiety and medical diagnoses by licensed physicians constituted objective evidence of disability, and while the court might have found that the employee's testimony de-emphasized her depression and anxiety to some extent, the committee did not rely upon this, and the employee was to be awarded the appropriate disability benefits. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

For purposes of denying disability benefits under Miss. Code Ann. § 25-11-113(1)(a), the Public Employees' Retirement System disability appeals committee's finding that the employee was not disabled as a result of arthritis or neck and arm pain was supported by substantial evidence; from a review of the medical records, the committee found that the employee's surgical intervention was considered successful and she was cleared to return to work without restrictions, plus an independent medical examination indicated that the employee was physically capable of performing her job. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

For purposes of denying benefits under Miss. Code Ann. § 25-11-113(1)(a), the Public Employees' Retirement System (PERS) disability appeals committee's decision that the employee was not disabled as a result of her fibromyalgia was supported by substantial evidence; one doctor's opinion alone was sufficient to constitute substantial evidence supporting the committee's decision, plus the committee found that virtually all of the employee's laboratory studies were normal and within acceptable limits, and most of the employee's missed work days were attributed to her complaints related to blood pressure and cardiac complaints. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

For purposes of denying disability benefits under Miss. Code Ann. § 25-11-113(1)(a), the decision of the Public Employees' Retirement System (PERS) that the employee was not permanently disabled as a result of arrhythmia was supported by substantial evidence; the PERS disability appeals committee evaluated the employee's medical records and cited specific medical evidence to support the finding that the arrhythmia was not disabling, PERS was not required to send the employee to a cardiologist in order to reject certain physician opinions, and given that the committee adequately explained its rejection of these opinions, it was not an abuse of discretion for the committee not have had the employee evaluated by a cardiologist. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

For purposes of denying disability benefits under Miss. Code Ann. § 25-11-113(1)(a), the decision of the Public Employees' Retirement System (PERS) regarding an employee's hypertension was supported by substantial evidence; although the employee's blood pressure readings might have appeared elevated to the court, it was not the court's place to substitute its judgment for that of the PERS, which found that the employee's medical records showed that the employee's blood pressure readings were within acceptable limits on most visits, and the PERS disability appeals committee sufficiently explained its conclusion that the employee's hypertension was not disabling. Case v. Pub. Emples. Ret. Sys., 973 So. 2d 301 (Miss. Ct. App. 2008).

Commission's finding that a surgical procedure undergone by a workers' compensation claimant was not reasonable and necessary was upheld because the commission's decision was supported with substantial evidence and was not clearly erroneous under Miss. Unif. Cir. & Cty. R. 5.03, as it was based on the reports and testimony of several experts, who indicated that surgery was inappropriate. Moffett v. Howard Indus., 976 So. 2d 910 (Miss. Ct. App. 2007), writ of certiorari denied by 977 So. 2d 343, 2008 Miss. LEXIS 97 (Miss. 2008).

Reversal of the Mississippi Public Employees' Retirement System's (PERS) denial of nonwork related retirement disability benefits to the employee was improper because the circuit court substituted its own judgment for that of the administrative agency; the assessment by PERS in ruling that the employee was unqualified for non-duty related disability benefits under Miss. Code Ann. § 25-11-113 was supported by substantial evidence. Public Emples. Ret. Sys. v. Lewis, 954 So. 2d 440 (Miss. Ct. App. 2006).

Where a city discharged an employee for directing a police dog towards a suspect who was resisting arrest, the civil service commission properly reinstated the employee because the testimony of the arresting officer and the police department's policies substantially supported the commission's finding that the use of the dog was not excessive force. City of Laurel v. Brewer, 919 So. 2d 217 (Miss. Ct. App. 2005).

Circuit court's overruling of the Mississippi Public Employees' Retirement System's denial of disability benefits to a teacher was reversed, as substantial evidence supported the agency's decision. However, the teacher was to submit to an evaluation by a physician of the agency's choice, as well as an updated exam by her physician if she so chose. Public Emples. Ret. Sys. v. Howard, 905 So. 2d 1279 (Miss. 2005).

Trial court erred in reversing administrative board's decision denying benefits which was based on the determination that it was not supported by substantial evidence. However, the board's decision was supported by substantial evidence, was not arbitrary and capricious, was made within the board's scope or power, and did not violate the employee's constitutional rights — the employee failed to meet her burden of proving she was in fact disabled — though she may have needed her surgery, she was clearly able but unwilling to return to her job; the record clearly supported the board's order, which took into consideration all of the medical evidence, which did not establish that the employee's ailments were disabling. Public Emples. Ret. Sys. v. Stamps, — So. 2d —, 2005 Miss. LEXIS 37 (Miss. Jan. 20, 2005), opinion withdrawn by, substituted opinion at 898 So. 2d 664, 2005 Miss. LEXIS 255 (Miss. Apr. 14, 2005).

Circuit court erred by substituting its judgment in place of a public employees' retirement system's decision to deny a teacher line of duty disability benefits based on contradictory evidence as to whether or not the teacher was unable to perform the duties of the job; it was within the province of the system to decide which evidence was believable. Public Emples. Ret. Sys. v. Howard, 2003 Miss. LEXIS 761 (Miss. Dec. 4, 2003), opinion withdrawn by, substituted opinion at, remanded by 905 So. 2d 1279, 2005 Miss. LEXIS 387 (Miss. 2005).

Appellate court noted that it was not an appellate court's job to determine whether the claimant had presented enough evidence to prove she was disabled, but rather whether an agency had presented enough evidence to support its finding that the claimant was not disabled; the evidence that supported the claimant's case for disability appeared to be anecdotal and while it did not require her to prove that she was disabled, the Mississippi Public Employees' Retirement System's decision was supported by much more substantial evidence than was brought in the claimant's case. Public Emples. Ret. Sys. v. Henderson, 867 So. 2d 262 (Miss. Ct. App. 2003).

Trial court's judgment reversing Public Employees' Retirement System Board of Trustees decision denying public employee's application for disability supported by substantial and not arbitrary or capricious evidence, which disclosed its reasons, was reversed. Public Emples. Ret. Sys. v. Howard, — So. 2d —, 2002 Miss. LEXIS 28 (Miss. Feb. 7, 2002), opinion withdrawn by, substituted opinion at, remanded by 2003 Miss. LEXIS 761 (Miss. Dec. 4, 2003).

Rule 5.04. Notice of appeal.

The party desiring to appeal a decision from a lower court must file a written notice of appeal with the circuit court clerk. A copy of that notice must be provided to all parties or their attorneys of record and the lower court or lower authority whose order or judgment is being appealed. A certificate of service must accompany the written notice of appeal. The court clerk may not accept a notice of appeal without a certificate of service, unless so directed by the court in writing. In all appeals, whether on the record or by trial de novo, the notice of appeal and payment of costs must be simultaneously filed and paid with the circuit court clerk within thirty (30) days of the entry of the order or judgment being appealed. The timely filing of this written notice and payment of costs will perfect the appeal. The appellant may proceed in forma pauperis upon written approval of the court acting as the appellate court. The written notice of appeal must specify the party or parties taking the appeal; must designate the judgment or order from which the appeal is taken; must state if it is on the record or an appeal de novo; and must be addressed to the appropriate court. (Amended May 13, 1996; amended November 26, 1996.)

Cross References — Civil appeals from justice court to be governed by URCCC Rules 5.01, 5.04, 5.07, 5.08 and 5.09, see RJC 27.

JUDICIAL DECISIONS

Appeal dismissed.
Notice.
Service of process.
Time limitation.

Appeal dismissed.

County's appeal was improperly filed in the supreme court because the county had an avenue to pursue justice through an appeal to circuit court, and it had not exhausted the remedies available to it in the courts below; therefore, the appeal was dismissed. Hinds Cty. v. Skinner (in re Appointment & Setting Sala ry for Cty. Court Adm'r & Deputy Court Adm'r), — So. 3d —, 2019 Miss. LEXIS 233 (Miss. June 13, 2019).

Notice.

Circuit court did not abuse its discretion in denying a petition for a writ of certiorari, Miss. Code Ann. § 11-51-93, after a justice court found petitioner guilty in absentia of two traffic offenses, because petitioner did not provide the required justice court record for the circuit court to review and, as such, petitioner did not show "good cause" as to why his petition should have been granted; the record did not indicate any effort by petitioner to secure the justice court record or any evidence the justice court ever received notice of petitioner's attempt to file an appeal of its judgment, as required by Miss. Unif. Cir. & Cty. R. 5.04. Abraham v. State, 61 So. 3d 199 (Miss. Ct. App. 2010).

Service of process.

Inmate's petition for review was governed by the rule and not Miss. R. Civ. P. 4 because the petition for Administrative Remedy Program review was not a "regular civil filing" that required service of process under the rules of civil procedure; no service of process was required, and thus, the circuit court had personal jurisdiction over the Mississippi Department of Corrections to hear the inmate's petition for review of his request for treatment. Jobe v. State, — So. 3d —, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. Dec. 17, 2019).

To appeal an Administrative Remedy Program (ARP) decision to circuit court, a prisoner must, within thirty days of receiving the ARP decision, submit for mailing a written notice of appeal to the circuit court clerk accompanied by a certificate of service and provide a copy of that notice; to the extent that the court of appeals issued a decision that may be interpreted as requiring service of process under M.R.C.P. 4(h) in an ARP appeal to circuit court, it is overruled. Jobe v. State, — So. 3d —, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. Dec. 17, 2019).

There is no requirement of service of process when a prisoner files a petition for review of an Administrative Remedy Program (ARP) decision in circuit court; because no statute specifies the manner for ARP appeals, the provisions in the rule for appealing a decision of a "lower court or lower authority," such as an administrative agency, to circuit court apply. Jobe v. State, — So. 3d —, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. Dec. 17, 2019).

Prisoners are usually indigent and not represented by counsel in Administrative Remedy Program actions; to burden them with first having to know that service of process of an appeal is necessary and then effecting such service of process from the confines of prison is onerous and burdensome and amounts to a denial of the prisoner's right to access to the courts. Jobe v. State, — So. 3d —, 2019 Miss. App. LEXIS 612 (Miss. Ct. App. Dec. 17, 2019).

Circuit court had personal jurisdiction over an inmate's claim even though the inmate failed to serve the Mississippi Department of Corrections with service of process through the Mississippi Office of the Attorney Genera; an inmate's petition seeking review of an Administrative Remedy Program decision is not a regular civil filing requiring service of process under M.R.C.P. 4(d)(5), but a notice of appeal from an administrative agency governed by URCCC 5.04. Willis v. Westley, — So. 3d —, 2019 Miss. App. LEXIS 611 (Miss. Ct. App. Dec. 17, 2019).

Time limitation.

Although a county court determined that an appeal from a denial to set aside a default judgment was untimely filed, as the appellant elected to collaterally attack the result by filing a motion to set aside 25 days after the period for perfecting the appeal had expired and more than a month after the appellant allegedly learned of the default judgment, the circuit court on appeal found that the appeal to the county court was timely because it was filed within 30 days of the order denying the motion to set aside the judgment. Fsg Southaven Llc v. Makowsky Ringel Greenberg Llc, — So. 3d —, 2019 Miss. App. LEXIS 324 (Miss. Ct. App. July 16, 2019).

Where an attorney appealed the denial of unemployment benefits, it was error to find that the attorney's appeal was untimely based on the failure to include a civil cover sheet, because the attorney demonstrated good cause for an extension of the filing deadline since the cover sheet requirement did not bar the otherwise timely notice of appeal. Cummings v. Miss. Dep't of Empl. Sec., 980 So. 2d 340 (Miss. Ct. App. 2008).

Employee abandoned an appeal of the termination of disability benefits by failing to have the record of the administrative agency's proceedings timely filed in accordance with Miss. Unif. Cir. & County Ct. Prac. R. 5.04, where the employee's attorney failed to take any action for eight months after the notice of appeal was filed. Stuart v. Public Emples. Ret. Sys., 799 So. 2d 886 (Miss. Ct. App. 2001).

ATTORNEY GENERAL OPINIONS

The appellant of a replevin does not have to post double the amount of the property value under this rule and any bonds which may have already been posted in the replevin case would remain in effect pending the appeal. Aldridge, May 13, 2005, A.G. Op. 05-0180.

The 10-day rule in Section 11-51-85 does not apply to replevins; someone wishing to appeal a replevin has 30 days to file a notice of appeal with the circuit court under this rule. Aldridge, May 13, 2005, A.G. Op. 05-0180.

The party desiring to appeal from justice court must file a written notice of appeal with the circuit court clerk. Criswell, Aug. 18, 2006, A.G. Op. 06-0376.

RESEARCH REFERENCES

Law Reviews — Inherent Judicial Rule Making Authority and the Right to Appeal: Time for Clarification, 22 Miss. C. L. Rev. 57, Fall, 2002.

Rule 5.05. Filing of record in appeals on the record.

In appeals in which the appeal is solely on the record, the record from the lower court or lower authority must be filed with the court clerk within thirty (30) days of filing of the notice of appeal. Provided, however, in cases involving a transcript, the court reporter or lower authority may request an extension of time. The court, on its own motion or on application of any party, may compel the compilation and transmission of the record of proceedings. Failure to file the record with the court clerk or to request the assistance of the court in compelling the same within thirty (30) days of the filing of the written notice of appeal may be deemed an abandonment of the appeal and the court may dismiss the same with costs to the appealing party or parties.

JUDICIAL DECISIONS

Time limitation.
Transfer of record.

Time limitation.

Circuit court erred in dismissing an employee's appeal of a city civil service commission's affirmance of his termination on the ground that pursuant to Miss. Unif. Cir. & Cty. R. 5.05 his, decision to wait forty days before he requested its assistance in compelling the commission to file the transcript exceeded the allowable thirty days because under Miss. R. App. P. 2(a)(2), the employee was entitled to notice from the circuit clerk of the deficiency in his appeal and fourteen days to correct any deficiency, and that lack of notice and opportunity to remedy the deficiency deprived the employee of due process; the circuit court may still dismiss an appeal for which an appellant has failed to timely provide a record, but the Mississippi Rules of Appellate Procedure apply to an appeal to circuit court. Fields v. City of Clarksdale, 27 So. 3d 464 (Miss. Ct. App. 2010), remanded by 133 So. 3d 373, 2014 Miss. App. LEXIS 90 (Miss. Ct. App. 2014).

Employee abandoned an appeal of the termination of disability benefits by failing to have the record of the administrative agency's proceedings timely filed in accordance with Miss. Unif. Cir. & County Ct. Prac. R. 5.05, where the employee's attorney failed to take any action for eight months after the notice of appeal was filed. Stuart v. Public Emples. Ret. Sys., 799 So. 2d 886 (Miss. Ct. App. 2001).

Transfer of record.

The appellant has the duty to ensure that the record arrives at the appropriate court and cannot rely on one county circuit court to ensure that records are transferred to another county circuit court. Zurich Am. Ins. Co. v. Beasley Contr. Co., 779 So. 2d 1132 (Miss. Ct. App. 2000).

Rule 5.06. Briefs on appeals on the record.

Briefs filed in an appeal on the record must conform to the practice in the Supreme Court, including form, time of filing and service, except that the parties should file only an original and one copy of each brief. The consequences of failure to timely file a brief will be the same as in the Supreme Court.

JUDICIAL DECISIONS

Dismissal of appeal.
Failure to file brief.

Dismissal of appeal.

Trial court did not abuse its discretion in dismissing the residents'appeal of the city's grant of a special use permit to the humane society as the residents did not file their brief by the time set forth Miss. Unif. Cir. &County Ct. Prac. R. 5.06, and Miss. R. App. P. 31(d) authorized the dismissalof appeals for failing to timely file a brief. Truax v. City of Gulfport, 931 So. 2d 592 (Miss. Ct. App. 2005), writ of certiorari denied by 933 So. 2d 303, 2006 Miss. LEXIS 334 (Miss. 2006).

Failure to file brief.

Because the record in an action for libel and slander was neither complicated nor voluminous, coupled with the fact that plaintiff failed to make out an apparent case of error, the circuit court should have affirmed the judgment of the county court — even though defendant failed to file a brief. Griffith v. Wall, 224 So. 3d 1293 (Miss. Ct. App. 2017).

Rule 5.07. Procedure on appeals by trial de novo.

In appeals by trial de novo, the circuit court clerk, upon the filing of the written notice of appeal, must enter the case on the docket, noting that it is an appeal with trial de novo. The appeal will proceed as if a complaint and answer had been filed, but the court may require the filing of any supplemental pleading to clarify the issues. All proceedings on an appeal de novo will be governed by the Mississippi Rules of Civil Procedure, where applicable, the Mississippi Rules of Evidence, and these Rules. (Amended May 13, 1996.)

Cross References — Civil appeals from justice court to be governed by URCCC Rules 5.01, 5.04, 5.07, 5.08 and 5.09, see RJC 27.

Rule 5.08. Supersedeas.

The perfecting of an appeal, whether on the record or by trial de novo, does not act as supersedeas. In cases being appealed that involve a money judgment, the party against whom money judgment was rendered may post with the court clerk of the court acting as the appellate court a bond that is 125% of the money judgment, such bond to be approved by the circuit clerk. The posting of this bond shall automatically act as a supersedeas solely on the money judgment, but not any other part of the order or judgment. Upon application the court may reduce the amount of the supersedeas bond. In appeals from lower authorities, when the statute provides for automatic supersedeas, the statute shall govern. In all other cases the court may grant a supersedeas upon proof of the party requesting the same, applying the same standards as for a preliminary injunction. However, except in those cases in which the statute provides for automatic supersedeas, no supersedeas will be granted on appeals from a denial, revocation or suspension of a license to practice a profession or a trade. The court may grant an expedited hearing, may alter the briefing schedules, and may require the record to be expedited. In all cases in which a discretionary supersedeas is granted, the court may require a bond sufficient to protect the interests of the other parties. (Amended May 13, 1996.)

Cross References — Civil appeals from justice court to be governed by URCCC Rules 5.01, 5.04, 5.07, 5.08 and 5.09, see RJC 27.

JUDICIAL DECISIONS

Applicability.
Authority of court.

Applicability.

Since the rule involved a supersedeas bond, it was not applicable in the appeal of an employee's termination; the bond required in Miss. Code Ann. § 11-51-93 does not appear t be a supersedeas bond, but a cost bond. Avery v. Univ. of Miss., — So. 3d —, 2019 Miss. App. LEXIS 194 (Miss. Ct. App. May 7, 2019).

Authority of court.

County court did not abuse its discretion in ordering garnished funds to be deposited in the court registry in lieu of a supersedeas bond because the amount deposited was more than the 125 percent of the judgment bond requirement; a contractor never obtained a supersedeas bond, but the county court's requiring the garnished funds to be deposited in the court registry had the same effect as a supersedeas bond, to provide absolute security to a company. Knights Marine & Indus. Servs. v. Gulfstream Enters., 216 So. 3d 1164 (Miss. Ct. App. 2017).

The circuit court had jurisdiction to enter a temporary restraining order or a temporary injunction allowing an American Legion Post to continue bingo operations while the revocation of its charitable bingo license was on appeal as § 97-33-61 did not grant an automatic supersedeas. American Legion Post 134 v. Mississippi Gaming Comm'n, — So. 2d —, 2000 Miss. LEXIS 188 (Miss. Aug. 17, 2000), opinion withdrawn by, substituted opinion at 798 So. 2d 445, 2001 Miss. LEXIS 71 (Miss. Mar. 22, 2001).

ATTORNEY GENERAL OPINIONS

The court may grant a supersedeas upon proof of the party requesting the same, applying the same standards as for a preliminary injunction. In all cases in which a discretionary supersedeas is granted, the court may require a bond sufficient to protect the interests of the other parties.This opinion supersedes MS AG Op., Grubbs (August 9, 1996) and MS AG Op., Smith (June 27, 1997). Parker, Aug. 27, 2004, A.G. Op. 04-0407.

In a case where an eviction was granted and judgment was entered for past due rent, if the party desires to appeal both the judgment for rent and the judgment of eviction the party must post a bond that is 125% of the money judgment and must also make application for supersdeas of the eviction. Criswell, Aug. 18, 2006, A.G. Op. 06-0376.

Rule 5.09. Cost bond.

In all appeals, unless the court allows an appeal in forma pauperis, the appellant or appellants shall pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk. Should a dispute arise, a party may apply to the court for relief. (Amended May 13, 1996.)

Cross References — Civil appeals from justice court to be governed by URCCC Rules 5.01, 5.04, 5.07, 5.08 and 5.09, see RJC 27.

Rule 5.10. Writ of certiorari.

The availability of writs of certiorari shall be as provided by the Constitution and Statutes of the State of Mississippi. Upon the filing of a record pursuant to a writ of certiorari, the case shall proceed as an appeal on the record.

JUDICIAL DECISIONS

Prosecutorial comment during examination of defendant.

Where defendant asserted that the prosecutor violated Miss. Unif. Cir. & County Ct. Prac. R. 5.12 by making the following side remark in her examination of defendant: "I think your definition of the truth is a little different from mine, but, at any rate, as I said, you signed off on it," and by further stating, "I don't doubt someone is committing perjury today, too, Mr. Dunigan," court concluded that even if it were to suppose that the comment should not have been made, it was surely a harmless error and not a prejudicial one. Dunigan v. State, 915 So. 2d 1063 (Miss. Ct. App. 2005), writ of certiorari denied by 921 So. 2d 1279, 2005 Miss. LEXIS 793 (Miss. 2005).

Rules 6.01 through 12.04. [Deleted].

Deleted effective July 1, 2017.

Editor's Note — Former Rule 6.01 was titled: "Scope of rules applicable only in criminal proceedings."

Former Rule 6.02 was titled: "Bail." See now MRCrP 8.1.

Former Rule 6.03 was titled: "Initial appearance." See now MRCrP 5.2.

Former Rule 6.04 was titled: "Preliminary hearing."

Former Rule 6.05 was titled: "Waiver of initial appearance and preliminary hearing." See now MRCrP 5.2, 6.1.

Former Rule 6.06 was titled: "Change of venue." See now MRCrP 11.1, 11.2.

Former Rule 6.07 was titled: "All applications to be made by motion." See now MRCrP 34.

Former Rule 6.08 was titled: "Interactive Audiovisual Devices." See now MRCrP 1.8.

Former Rule 7.01 was titled: "Charge to the grand jury." See now MRCrP 13.2.

Former Rule 7.02 was titled: "Grand jury." See now MRCrP 13.1, 13.3.

Former Rule 7.03 was titled: "Grand jury not to do certain things." See now MRCrP 13.6.

Former Rule 7.04 was titled: "Grand jury secrecy." See now MRCrP 13.5.

Former Rule 7.05 was titled: "Recalcitrant witnesses before grand jury." See now MRCrP 13.4.

Former Rule 7.06 was titled: "Indictments." See now MRCrP 14.1.

Former Rule 7.07 was titled: "Multiple count indictments." See now MRCrP 14.2.

Former Rule 7.08 was titled: "Joinder of defendants." See now MRCrP 14.2.

Former Rule 7.09 was titled: "Amendment of indictments."

Former Rule 8.01 was titled: "Arraignment." See now MRCrP 15.1.

Former Rule 8.02 was titled: "Review of bond and setting of deadlines for pretrial motions." See now MRCrP 15.1, 16.1.

Former Rule 8.03 was titled: "Defendant's presence at plea." See now MRCrP 15.2, 15.3.

Former Rule 8.04 was titled: "Entry of guilty pleas, plea bargaining, withdrawal of guilty pleas." See now MRCrP 15.2 to 15.4.

Former Rule 8.05 was titled: "Pro se defendants." See now MRCrP 7.01.

Former Rule 9.01 was titled: "Pretrial publicity."

Former Rule 9.02 was titled: "Trial docket."
Former Rule 9.03 was titled: "Severance."
Former Rule 9.04 was titled: "Discovery." See now MRCrP 17.2, 17.3, 17.6 to 17.9.
Former Rule 9.05 was titled: "Alibi defense discovery." See now MRCrP 12.2, 17.4.
Former Rule 9.06 was titled: "Competence to stand trial." See now MRCrP 12.2, 12.3, 12.5.
Former Rule 9.07 was titled: "Insanity defense." See now MRCrP 17.4.
Former Rule 9.08 was titled: "Omnibus hearing."
Former Rule 10.01 was titled: "Jury selection." See now MRCrP 18.1, 18.3.
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Former Rule 11.01 was titled: "Sentencing." See now MRCrP 26.2, 26.8.
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Former Rule 11.05 was titled: "Entry of order and duty of clerk." See now MRCrP 26.8, 34.5.
Former Rule 12.01 was titled: "Post-conviction bail." See now MRCrP 8.3.
Former Rule 12.02 was titled: "Appeals from justice or municipal court." See now MRCrP 18.1, 29.1 to 29.5.
Former Rule 12.03 was titled: "Appeals from county court." See now MRCrP 30.1.
Former Rule 12.04 was titled: "Writ of certiorari."
For current rules regarding criminal proceedings, see the Mississippi Rules of Criminal Procedure (MRCrP).

APPENDIX A & B [DELETED.]

Deleted effective July 1, 2017.

Editor's Note — Former Appendix A included a sample charge to the grand jury and a checklist for action taken at omnibus hearings.

Former Appendix B read: "Rule 4.07. Rule for Expedited Small Claims for Jones, Lee or Rankin County Courts Only [Omitted]."

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UNIFORM CHANCERY COURT RULES

Adopted Effective February 1, 1989

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ADMINISTRATIVE ORDER IN REGARD TO STANDARDIZED FINANCIAL STATEMENTS IN DOMESTIC RELATIONS ACTIONS

EXHIBIT "A"

Cross References — Chancery Courts, see Mississippi Code of 1972 § 9-5-1 et seq.

Practice and procedure in Chancery Courts, see Mississippi Code of 1972 § 11-5-1 et seq.

1.00 GENERAL RULES

Rule 1.01. Proceedings must be orderly and dignified.

All proceedings in the Chancery Court, whether in term time or in vacation, shall be conducted with due formality and in an orderly and dignified manner. No drinks, food, gum or smoking shall be permitted. The counsel, parties, and witnesses, must be respectful to the court and to each other. Bickering or wrangling between counsel or between counsel and witness will not be tolerated. Applause or demonstration or approval or disapproval, and the use of profane or indecent language are prohibited. Counsel, in examining witnesses, in reading from brief or opinion and in all presentations, to the Court, shall stand unless specifically excused from doing so by the Court. Counsel shall in formal hearings address the Court in the historic manner of "Your Honor" and/or "May it please the Court." The dignity and the respect of the Court shall be preserved at all times.

In the interest of security, all persons entering the courtroom may be searched for weapons.

JUDICIAL DECISIONS

Expulsion from courtroom proper. Where an executor was warned that his remarks, gestures and laughter during testimony were improper but he deliberately ignored the chancellor's directives, the chancellor did not abuse his discretion in removing him from the courtroom, and the executor was not thereby prejudiced as the chancellor allowed him to consult his attorney before cross-examination of opposing witnesses. In re Estate of Volmer, 832 So. 2d 615 (Miss. Ct. App. 2002).

Rule 1.02. Officers must be present in court.

When the Court is in session the Sheriff and Clerk, in person or by competent deputies, must be present in the courtroom to perform such duties as may be required of them by law or the direction of the Chancellor unless excused by the Chancellor. The Court Reporter shall be present as the Chancellor may direct, to perform the duties of Court Reporter.

Rule 1.03. Sheriff must keep courtroom clean and comfortable.

The sheriff must see that the courtroom, library, Judge's chamber, witness rooms and rest rooms are kept clean and in comfortable condition.

Rule 1.04. Clerk must have papers and dockets in courtroom.

Unless the Chancellor directs otherwise, the Clerk shall, while the court is in session, have and keep in the courtroom, or in an office adjoining, the court file of each action pending for that day in the Court, and all dockets he is required to keep.

Rule 1.05. Officers, witnesses and solicitors must be prompt.

When any civil action has been set for, or adjourned to, a particular day or hour, all officers, parties, witnesses and solicitors whose presence is necessary for the trial shall be present promptly at the time set. Any negligent or willful failure to obey this rule shall be punished by contempt.

JUDICIAL DECISIONS

Contempt proper.

Chancellor did not err finding the attorney in contempt for failing to appear at the January 9 hearing where since there was no requirement that the attorney's conduct be willful under Miss. Unif. Ch. Ct. R. 1.05, there was no merit to her argument that the contempt judgment had to be set aside for lack of willfulness on her part; it was not a violation of the Due Process Clause of the Fourteenth Amendment to hold contempt hearings in youth court abuse proceedings out of the public eye and the chancellor did not become substantially involved with the prosecution of the contempt charge. In re Spencer, 985 So. 2d 330 (Miss. 2008), writ of certiorari denied by 555 U.S. 1046, 129 S. Ct. 629, 172 L. Ed. 2d 610, 2008 U.S. LEXIS 8600, 77 U.S.L.W. 3324 (2008).

Attorney waived her right to notice and specification of the charge against her; pursuant to Miss. Unif. Ch. Ct. R. 1.05, an attorney need only be negligent in failing to appear for the chancellor to give grounds for holding her in contempt; since there was no requirement that the attorney's conduct be willful under this rule, there was no merit to her argument that the contempt judgment should be set aside for lack of willfulness on her part. In re Spencer, — So. 2d —, 2008 Miss. LEXIS 126 (Miss. Feb. 28, 2008), substituted opinion at, opinion withdrawn by 985 So. 2d 330, 2008 Miss. LEXIS 327 (Miss. June 19, 2008).

Rule 1.06. Assignment of cases.

(A) In multi-judge districts and courts, all civil cases shall be assigned immediately on the filing of the complaint by such method which shall insure that the assignment shall be random, that no discernable pattern of assignment exists, and that no person shall know to whom the case will be assigned until it has been assigned. If an attorney or party shall attempt to manipulate or defeat the purpose of this rule, the case shall be reassigned to the judge who would have otherwise received the assignment. If the judge who would have received the case under an assignment in compliance with this rule cannot be determined, a new assignment in compliance with the rule shall be made, excluding the judge to whom it was incorrectly assigned. Sanctions, including costs and attorney's fees, may be imposed by that judge on reassignment. Such sanctions may also include suspension from practice in the court imposing them for not more than 30 days and referral to the Bar for further discipline.

(B) Decisions regarding this rule shall be subject to review by the Supreme Court under M.R.A.P. 21, and appropriate stays shall be entered by the trial court to allow such review.

(C) In districts where motion days are set in advance with judges specifically assigned, preliminary procedural matters and those matters enumerated under M.R.C.P. 81(d)(1) and (2) may be submitted to the judge assigned such duties, notwithstanding the fact that the case has been assigned to another judge. Furthermore, by local rule approved by the Supreme Court, the trial court may make special provisions accommodating local needs of economy and efficiency which might otherwise be at variance with this rule. (Adopted effective May 29, 2003.)

COMMENT

In 2002 the Legislature adopted Miss. Code Ann. § 11-1-56, which required civil case assignments to be delayed until one defendant has filed responsive pleadings. By the adoption of this rule, the Supreme Court has superceded Section 11-1-56, exercising its inherent authority to adopt rules of practice, procedure and evidence to promote justice, uniformity, and the efficiency of the courts, as articulated in *Newell v. State*, 308 So. 2d 71 (Miss. 1975) and *Hall v. State*, 539 So. 2d 1338 (Miss. 1989).

The purpose of this rule is to prevent "judge shopping" within a district or a court. Although voluntary dismissal is allowed under M.R.C.P. 41 at any time prior to service by the adverse party of an answer or summary judgment, when a civil case is so dismissed and then refiled immediately thereafter with no substantial change in the parties or claims, such practice, as an example, may be taken as a wilful violation of this rule. Wilful violation of this rule may constitute an offense subject to suspension and other discipline under Rule 3.4(c) of the Rules of Professional Conduct. Sanctions authorized by this rule are cumulative to discipline under the Rules of Professional Conduct.

The assignment of cases by regular rotation among the judges of the district is not a random assignment as contemplated by this rule since a regular rotation will allow those attentive to the docket to predict the judge who will receive a particular assignment.

A party who believes that a case has been assigned in violation of this rule will first submit the issue to the judge before whom the case is pending; thereafter, either party aggrieved by the judge's decision on the issue may seek review of that decision by this Court under the provisions of M.R.A.P. 21.

In some districts, local modifications, which to some degree are at variance with the strict provisions of this rule, may be made while fulfilling the policy of the rule. These modifications are to be made by local rule, on petition of the local district under M.R.C.P 83 to the Supreme Court. The order by which this Rule 1.06 was adopted provides:

It is further ordered that this new rule shall be effective upon issuance of this order; however, local practices adopted for the purpose of accommodating the needs of economy and efficiency may be continued for a period of forty-five days from the issuance of this order, and in districts wherein the judges of the district have within such period petitioned the Court under M.R.C.P. 83 for local rules seeking approval of such practices or of other practices which might otherwise be in variance to this rule, the practices may continue to be used until the Supreme Court has considered the petition.

[Comment adopted effective May 29, 2003.]

JUDICIAL DECISIONS

In general.

Judge did not abuse her discretion in sanctioning an attorney and his client because a standing order merely implemented Miss. Unif. Ch. Ct. R. 1.06(C), which authorized the opponent's Miss. R. Civ. P 81(d) summons; thus, the attorney's motion to quash and request for sanctions against the opponent had no hope for success. Garner v. Smith, — So. 3d —, 2019 Miss. LEXIS 241 (Miss. June 27, 2019).

Opponent's Miss. R. Civ. P. 81(d) summons noticing a hearing on his contempt petition before a judge was clearly permissible under the rules because a standing order was nothing more than an order implementing Miss. Unif. Ch. Ct. R. 1.06(C); because the order made no distinction between Rule 81(d)(1) and (2) matters, and it contained no "special provisions" that varied from Rule 1.06, it need not be approved by the supreme court. Garner v. Smith, — So. 3d —, 2019 Miss. LEXIS 241 (Miss. June 27, 2019).

Attorney's motion to quash, premised on alleged judge shopping, was wholly unfounded and without justification because a standing order by its express terms applied to all Miss. R. Civ. P. 81(d) summonses, and so Rule 81(d)(2) summonses for contempt were clearly covered by the standing order; Miss. Unif. Ch. Ct. R. 1.06 makes no distinction between Rule 81(d)(1) and (2) matters. Garner v. Smith, — So. 3d —, 2019 Miss. LEXIS 241 (Miss. June 27, 2019).

New Miss. Unif. Ch. Ct. R. 1.06 was adopted and made effective May 29, 2003 to promote the fair and efficient administration of justice in the assignment of cases in the trial courts of the State in multi-judge districts, effective upon the issuance of the order; however, local practices adopted for the purpose of accommodating the needs of economy and efficiency could be continued for a period of 45 days from the issuance of the order, and in districts wherein the judges of the district within such period petitioned the Supreme Court under Miss. R. Civ. P. 83 for local rules seeking approval of such practices or of other practices which might otherwise be at variance with the rule, the practices could continue to be used until the Supreme Court had considered the petition. In re Unif. Ch. Ct. Rules, — So. 2d —, 2003 Miss. LEXIS 252 (Miss. May 29, 2003).

Rule 1.07. Presentation to other chancellor of matter when relief is denied prohibited.

When any matter been presented to one of the Chancellors and the relief denied, the attorney shall not go to one of the other Chancellors and present the same matter.

JUDICIAL DECISIONS

Illustrative cases.

There was no violation of this rule where (1) two defendants filed motions to dismiss or, in the alternative, for summary judgment as to their liability for attorney's fees, (2) the chancellor denied both motions, (3) after the denial of a petition for interlocutory appeal, the case was referred to another chancellor, who awarded attorneys' fees and expenses to the plaintiff, but found that the two defendants were not liable for such fees and expenses. Mauck v. Columbus Hotel Co., 741 So. 2d 259 (Miss. 1999).

There was no violation of this rule where, at trial before a chancellor, a different decision was rendered on an issue than was rendered before a different chancellor on a pretrial motion for summary judgment. Mauck v. Columbus Hotel Co., — So. 2d —, 1999 Miss. LEXIS 203 (Miss. June 17, 1999), opinion withdrawn by, substituted opinion at, remanded by 741 So. 2d 259, 1999 Miss. LEXIS 266 (Miss. Aug. 26, 1999).

Rule 1.08. Withdrawal of counsel.

When an attorney makes an appearance for any party in an action, the attorney will not be allowed to withdraw as counsel for the party except upon written motion and after reasonable notice to the client and opposing counsel.

Rule 1.09. Notification of relevant pending cases.

When counsel in a cause is aware of a case pending in another court of this or any other state or federal jurisdiction, which likely may affect the subject matter or jurisdiction of the cause pending in the Chancery Court, such counsel shall immediately notify the Chancery Court by written notice docketed for such other cause.

Rule 1.10. Discovery deadlines and practice.

(A) All discovery must be completed within ninety days from service of an answer by the applicable defendant. Additional discovery time may be allowed with leave of court upon written motion setting forth good cause for the extension. Absent special circumstances the court will not allow testimony at trial of an expert witness who was not designated as an expert witness to all attorneys of record at least sixty days before trial.

(B) When responding to discovery requests, interrogatories, requests for production, and requests for admission, the responding party shall, as part of the responses, set forth immediately preceding the response the question or request to which such response is given. Responses shall not be deemed to have been served without compliance to this subdivision.

(C) No motion to compel shall be heard unless the moving party shall incorporate in the motion a certificate that movant has conferred in good faith with the opposing attorney in an effort to resolve the dispute and has been unable to do so. Motions to compel shall quote verbatim each contested request, the specific objection to the request, the grounds for the objection and the reasons supporting the motion.

JUDICIAL DECISIONS

Failure to timely depose expert witness.
Failure to timely designate expert witness.
Review.

Failure to timely depose expert witness.

In view of the fact the ex-husband failed to depose his expert witness within the time limits set by the chancery court even though it extended the discovery deadline, the chancery court did not err by refusing to admit the expert's deposition testimony. Russell v. Russell, 148 So. 3d 1052 (Miss. Ct. App. 2014).

Failure to timely designate expert witness.

Chancellor did not abuse its discretion by excluding the testimony of a local attorney, as to the reasonableness of the attorney's fees sought by the wife in a divorce proceeding, because the wife failed to designate the attorney as an expert witness as required. Rodrigue v. Rodrigue, 270 So. 3d 933 (Miss. Ct. App. 2018).

In divorce proceeding, the husband's expert witness was properly excluded for the husband's failure to timely disclose under Miss. Unif. Ch. Ct. R. 1.10 because the litigation was pending for approximately two years prior to trial, yet the husband failed to designate his expert witness until one week before the trial date, which would have resulted in prejudice to the wife. The husband knew that his wife planned to hire an expert to appraise the husband's business and that she had designated her expert witness and submitted the report during the discovery period. Hammers v. Hammers, 890 So. 2d 944 (Miss. Ct. App. 2004), writ of certiorari denied by 892 So. 2d 824, 2005 Miss. LEXIS 7 (Miss. 2005), writ of certiorari denied by 2005 Miss. LEXIS 72 (Miss. Jan. 6, 2005).

Review.

Even assuming the rule would apply, the hearing transcript indicated that no objection was made to an affidavit, and thus, the issue of whether the chancery court impermissibly relied on the affidavit was not preserved for appeal; in any event, there was no merit in the assertion because the transcript indicated that the chancery court relied upon its own legal analysis in making its determination. Oliver v. Oliver (in re Estate of Oliver), — So. 3d —, 2019 Miss. App. LEXIS 155 (Miss. Ct. App. Apr. 16, 2019).

Rule 1.11. Motions for recusal of judges.

Any party may move for the recusal of a judge of the chancery court if it appears that the judge's impartially might be questioned by a reasonable person knowing all the circumstances, or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law. A motion seeking recusal shall be filed with an affidavit of the party or the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, if it is based upon facts which could not reasonably have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted. The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing is held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B. (Adopted April 4, 2002.)

JUDICIAL DECISIONS

Recusal.

Judge's comments and the judge's wife's positions on nonprofits' boards required no recusal because (1) a citizen did not show the comments indicated reluctance to rule for the citizen, (2) the judge and the judge's wife had no interest in a party litigant, and (3) nothing showed a decision in the case would substantially affect the judge or the judge's wife. Kinney v. S. Miss. Planning & Dev. Dist., 202 So. 3d 187 (Miss. 2016).

No manifest error occurred when a trial court denied a motion to recuse because plaintiff in the quiet title action failed to present evidence in support of the motion that raised any question as to the chancellor's impartiality. Although it was true that opposing counsel had represented the husband of the court administrator, the representation was in a separate and distinct criminal proceeding and the husband was not a party to the quiet title action. Sullivan v. Maddox, 122 So. 3d 75

(Miss. Ct. App. 2013), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 453 (Miss. Aug. 29, 2013).

Rule 1.12. Electronic media coverage.

Electronic media coverage of judicial proceedings by means of cameras, television and other electronic devises is governed by the Rules for Electronic and Photographic Coverage of Judicial Proceedings. (Adopted effective April 17, 2003 for proceedings conducted from and after July 1, 2003.)

COMMENT

Section 3B(12) of the Code of Judicial Conduct prohibits broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto except as authorized by rule or order of the Supreme Court. The Supreme Court has now adopted the Rules for Electronic and Photographic Coverage of Judicial Proceedings which provides detailed guidance for such coverage.

Adopted effective April 17, 2003.

Rule 1.13. Electronic filing and service procedures.

A court may, by local rule, allow pleadings and other papers to be served, filed, signed, or verified by electronic means in conformity with the Mississippi Electronic Court System procedures. Pleadings and other papers filed electronically in compliance with the procedures are written papers for purposes of these rules. Please refer to the Administrative Procedures for Mississippi Electronic Court System on the Supreme Court's website at www.mssc.state.ms.us. (Adopted effective January 8, 2009, for purposes of a pilot program for the Mississippi Electronic Court System.)

2.00 RULES CONCERNING PROCEEDINGS

Rule 2.01. [Deleted].

Rule 2.02. Pleadings must be filed before presented.

All pleadings, accounts and other papers in any action shall be filed with the Clerk of the proper Court before being presented to the Chancellor. If to do so would inflict undue hardship on the attorney, or in emergency matters, the papers may be presented to the Chancellor and marked filed by him as provided in M.R.C.P. 5(e). Thereafter, the said papers shall be forthwith transmitted by the attorney to the proper Clerk.

Rule 2.03. No blanks in pleadings.

No blanks shall be contained in any pleading.

Rules 2.04 and 2.05. [Deleted].

[Deleted September 19, 1979.]

Rule 2.06. Blanks in pleadings must be filled in.

All blanks contained in any pleading must be properly filled in according to the fact or facts before being filed with the clerk or presented for consideration by the Court or Chancellor. If the pleader does not know, and is unable to learn, the necessary fact or facts to enable him to fill in such blanks accurately, he must so state in his pleading.

Rule 2.07. Pleadings must be paragraphed.

Each of the several facts on which a complainant may rely for relief shall be set forth in his bill of complaint in a separate paragraph, so far as can be conveniently done, and each paragraph shall be numbered consecutively. The defendant shall answer the bill in like numerical order, and may plead to the fact or facts stated in each such paragraph of the bill, any proper affirmative defense thereto. Or the defendant may answer the bill paragraphically and then plead such affirmative matters of defense to the bill as a whole as he may deem advisable or proper. But in such case, each of the several facts relied on as an affirmative defense shall be stated in a separate paragraph, so far as to distinguish the matters therein pleaded from those previously admitted or denied in response to the bill. And the same rule shall be observed in regard to cross-bills and answers thereto. Any failure to comply with this rule may be taken advantage of by motion to strike such defective pleading.

Rule 2.08. Delay in answering.

If after a cause is otherwise triable by law the defendant shall obtain leave to answer the bill and thereby delay the trial beyond the term, he shall, on motion of the complainant, be taxed with all costs accrued to the time of granting such leave, unless good cause be shown why it would be inequitable so to do.

Rule 2.09. Amendments during trial term.

Where either party during the term at which a cause is triable, or during the trial thereof, shall obtain leave to amend his pleadings concerning any material matter, which the opposite party is not prepared to meet, shall, if he so requests be entitled to a continuance, and the party so making such amendment shall, on motion of the opposite party, be taxed with all costs accrued to the time of granting such leave, unless special circumstances of the case make it inequitable so to do.

Rule 2.10. Trial not delayed because demurrer is overruled.

The complainant shall not be delayed of a trial in any case because a demurrer is overruled. If, in such a case, the defendant has failed to file his answer with his demurrer he shall, if the complainant so insists, be required to answer within such time as will not delay the trial beyond the term.

Rule 2.11. Motions for security for costs.

All motions for security for costs must be filed and presented not later than the second day of the term next after process has been served on the movant. Otherwise such motion will be overruled unless good cause is shown why this rule was not complied with.

3.00 RULES CONCERNING TRIALS

Rule 3.01. Vacation business rules of precedence.

Where the Chancellor has, by order or custom, set apart time for hearing vacation actions, all vacation matters coming before him at such time and place shall have precedence over all the business of any term of Court that may be then in session and not finally adjourned. At all other times during any term of Court, the business of the term shall have precedence over all vacation matters presented to the Chancellor.

Rule 3.02. Cloud of witness — What done.

The practice of summoning numerous witnesses to prove the same fact or set of facts often serves merely to increase the costs and consume the time of the Court. In such cases the Chancellor may, in his discretion, tax the per diem and mileage of all such unnecessary witnesses against the party causing them to be summoned whether they be called to testify or not. In all cases the mileage and per diem of all witnesses who are not called to testify shall be taxed against the party causing them to be summoned, unless good cause to the contrary be shown.

Rule 3.03. Examination of witnesses.

The examination of witnesses shall be limited to the direct examination, the cross-examination, and the redirect examination concerning matters brought out on cross-examination. Counsel for either party may be permitted, on request, to inquire about new matters pertinent to the issues which may have been inadvertently omitted. Opposing counsel may also inquire concerning the same matter. In all cases the examination must be conducted in an orderly and decorous manner without interruption from opposing counsel except for the purpose of interposing objections.

Rule 3.04. Objections to testimony — Rulings thereon.

All objections to testimony must be made to the Chancellor, not to opposing counsel. The objection must be specific rather than general. If requested by the Chancellor, counsel offering the testimony must state the purpose for which it is offered, and counsel objecting thereto must state the reasons for his objection. If the Chancellor shall reserve his ruling, counsel interposing the objection shall make a note thereof and renew his objection at the conclusion of the testimony; otherwise, he shall be deemed to have waived his objection.

Rule 3.05. Copy of exhibits.

Unless excused by the Court, it shall be the duty of an attorney to distribute copies of any exhibits to the Court and opposing counsel when offered. If a party is to make a substitution of a copy for any exhibit introduced into evidence, the copy shall be presented at the time the original is presented unless it could not be reasonably anticipated that the exhibit was to be offered.

Rule 3.06. Only one attorney for each party may examine witness.

Only one attorney for each party to the action may examine a witness, interpose objections, or respond to objections except by permission of the Chancellor.

Rule 3.07. Conference with witnesses.

Counsel for each party shall confer with his witness before beginning the taking of testimony in behalf of his client. This rule shall not apply to witnesses who are inaccessible before that time.

Rule 3.08. Firearms prohibited on the witness stand or in courtroom.

No person other than law enforcement officers shall take or carry firearms or other weapons into the courtroom. When law enforcement officers take the stand as litigants or witnesses, such officers shall remove their firearms and place same in the possession of the bailiff until the witness or litigant has left the witness stand.

Rule 3.09. Agreements of counsel.

Oral agreements of counsel made in the presence of the Court must be recorded by the Court Reporter, or an order entered in accordance therewith approved by counsel. All other agreements should be reduced to writing and filed among the papers in the case.

JUDICIAL DECISIONS

Application.

In a child custody and support modification action, the issue was whether the lower court committed reversible error by approving and signing a consent judgment which was not approved or signed by the father or his attorney. Further, no terms were ever announced in open court, recorded by a court reporter, and approved by counsel as required by Miss. Unif. Ch. Ct. R. 3.09 and 5.03,; the appellate court held that given those facts, it was without proof of substantial credible evidence to support the chancellor's order, and the order was vacated and the matter remanded for proper compliance with the aforementioned rules. Samples v. Davis, 904 So. 2d 1061 (Miss. 2004).

Rule 3.10. Earwigging the chancellor prohibited.

No person shall undertake to discuss with or in the presence or hearing of the Chancellor the law or the facts or alleged facts of any litigated action then pending in the Court or likely to be instituted therein, except in the orderly progress of the trial, and arguments or briefs connected therewith. No attempt in any manner, except as above stated, to influence the Chancellor's decision shall be made. No person shall send any written communication to the Chancellor concerning a pending action in the Court without delivering or mailing a copy of that communication to the opposing party. The Chancellor shall file in the court file all such written communications received by him. Any person who shall violate this rule, knowing that such conduct is prohibited, shall be guilty of a contempt.

JUDICIAL DECISIONS

In general.
Applicability.

In general.

In a contempt action, the wife asserted the husband received preferential treatment due to "earwigging," by means of letter to the chancellor, which was prohibited under Miss. Unif. Ch. Ct. R. 3.10. However, said letter was sent to chancellor two years before orders appealed from in the instant action, and it concerned a matter not at issue on appeal; thus, her claim was without merit. Jacobs v. Jacobs, 918 So. 2d 795 (Miss. Ct. App. 2005), writ of certiorari denied by 920 So. 2d 1008, 2005 Miss. LEXIS 596 (Miss. 2005).

Applicability.

In a contested adoption suit between paternal grandparents and paternal great-grandparents, the chancellor did not err when she considered the paternal grandparents' post-trial conduct in her reconsideration of the moral fitness of the parties. Following the publication of a newspaper article that portrayed the paternal grandparents and the children, the chancellor properly stated that initiating public exposure regarding this pending confidential matter was in conflict with well-established law regarding the confidentiality of youth court and adoption proceedings. In the Interest of N.B. v. Berryman, 135 So. 3d 220 (Miss. Ct. App. 2014).

Rule 3.11. Argument of counsel.

The Chancellor may dispense with argument in any action. He may require counsel to argue or brief the law and facts, either or both, in any action, and shall not be bound to decide the same until that duty has been performed to his satisfaction. In all cases counsel must be prepared to argue the case as soon as the taking of the testimony is concluded. The Chancellor may specify the points of law or fact on which he desires argument and regulate the order and limit the length of oral arguments. In all cases where briefs are requested by the Chancellor, copies thereof must be delivered in person or by mail to opposing counsel. Any negligent or willful failure on the part of counsel to fully argue or brief any question when requested by the Chancellor will be considered a grave discourtesy.

Rule 3.12. Notification of settlement or possible continuance.

Where a case has been set for trial on a day certain (placed on trial docket) and the parties have settled or agreed to settle the case before the trial date, then plaintiffs attorney shall immediately upon such agreement being reached so notify the Court. Where parties agree before the day set for trial to continue their case, then plaintiffs attorney shall likewise be obligated to immediately notify the Court that the parties desire to mutually seek a continuance.

RESEARCH REFERENCES

ALR. Continuance of Case Because of Illness of Expert Witness. 18 A.L.R.6th 509.

4.00 RULES CONCERNING OPINIONS

Rule 4.01. Findings by the court.

In all actions where it is required or requested, pursuant to M.R.C.P. 52, the Chancellor shall find the facts specially and state separately his conclusions of law thereon. The request must be made either in writing, filed among the papers in the action, or dictated to the Court Reporter for record and called to the attention of the Chancellor.

JUDICIAL DECISIONS

In general.
Applicability.
Arbitration award.
Divorce.
Harmless error.

In general.

Deacon of a church did not show that the chancellor was required to make findings of fact and conclusions of law because the deacon never asked the chancellor to make findings of facts and conclusions of law. Eskridge v. Peacock, 259 So. 3d 1278 (Miss. Ct. App. 2018).

Chancellor did make findings of fact that were clearly set forth in his order and bench ruling because the chancellor found that the material-change-in-circumstances requirement applied and had been met, and a careful reading of his bench ruling revealed facts upon which he based his finding. Irle v. Foster, 175 So. 3d 1232 (Miss. 2015).

On a mother's counterclaim against a father for contempt concerning child support, medical insurance, and medical bills, a chancellor did not err by failing to provide specific findings of fact and conclusions of law because there was no record of any request by either counsel for specific findings of fact and conclusions of law. Farrior v. Kittrell, 12 So. 3d 20 (Miss. Ct. App. 2009).

Chancery court's original and amended judgments that denied a father's request for a contempt order against the mother and a change in custody of their child were sufficiently detailed in the court's findings and conclusions of law where each included a list of facts supporting the court's decision. Balius v. Gaines, 958 So. 2d 213 (Miss. Ct. App. Nov. 1, 2005), writ of certiorari denied by 936 So. 2d 367, 2006 Miss. LEXIS 475 (Miss. 2006).

Trial court complied with Miss. Unif. Ch. Ct. R. 4.01 in both its original ruling and its amended ruling because both judgments consisted of six pages, including eight numbered paragraphs that detailed the findings of fact pronounced from the bench, and both judgments included a list of facts supporting the court's decision to deny the father's contempt motions and to grant the mother's motion for sanctions. Balius v. Gaines, 914 So. 2d 300 (Miss. Ct. App. 2005).

Because the appellate court was unable to determine the basis of a chancellor's decision, as the record contained neither a transcript of the proceedings in the trial court, nor any factual or legal foundation for the chancellor's decision to modify a decree, the case was remanded to the trial court for the chancellor to create a record of his factual findings as well as the legal basis for his decision. Yates v. State, 919 So. 2d 1122 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 71 (Miss. 2006).

Chancellor is not required to make a finding of fact and conclusion of law in absence of a request therefor, timely made. Bowser v. Tootle, 556 So. 2d 1373 (Miss. 1990).

Applicability.

Chancellor erred in awarding a father custody of his children as the chancellor did not refer to the factors in the best interests of the children or identify what Albright factors were considered, which was important as several of the factors that might have been in the father's favor were altered within a month of the court's ruling when the father and the children moved to California; specific findings were mandated due to the nature of the case, and Miss. Unif. Ch. Ct. R. 4.01 and Miss. R. Civ. P. 52(a) did not apply. Parra v. Parra, 65 So. 3d 872 (Miss. Ct. App. 2011).

Arbitration award.

A chancellor, upon timely request, must render findings of fact and conclusions of law when affirming or denying an arbitration award, based upon an agreed order for arbitration. Americrete, Inc. v. West Alabama Lime Co., 758 So. 2d 415 (Miss. 2000).

Divorce.

Trial court erred in failing to provide findings of fact and conclusions of law when requested to do so by party to divorce. West v. West, 881 So. 2d 188 (Miss. 2004), opinion withdrawn by, substituted opinion at 891 So. 2d 203, 2004 Miss. LEXIS 1411 (Miss. 2004).

Trial court erred in failing to provide findings of fact and conclusions of law when requested to do so by party to divorce. Lowery v. Lowery, 657 So. 2d 817 (Miss. 1995).

Harmless error.

Where chancery court was requested to make particularized findings of fact and conclusions of law but declined to do so, making general findings of fact and conclusions of law instead, chancellor technically complied with requirements of this rule, and although particularized findings would have aided court on appeal, reversal was not warranted. Century 21 Deep S. Properties, Ltd. v. Corson, 612 So. 2d 359 (Miss. 1992); Hartwell Handle Co. v. Jack, 149 Miss. 465, 115 So. 586 (1928); Lott v. Windham, 191 Miss. 849, 4 So. 2d 342 (1941); Vicksburg, S. & P. Ry. v. Williams, 102 Miss. 735, 59 So. 883 (1912).

Rule 4.02. Opinion a part of record.

The Chancellor shall not be bound to render a formal opinion in deciding any action except as required by the preceding rule. He may at his election render an opinion either orally or in writing. If he shall render an oral opinion, it shall be taken down by the Court Reporter who shall, when directed by the Court, transcribe the same and submit it to the Chancellor for correction and approval. In either event the opinion so rendered shall be filed among the papers and become a part of the record in the cause without any order or direction to that effect.

JUDICIAL DECISIONS

In general.

Husband's claim that the chancellor erred in failing to direct that the transcript from the telephone opinion be made part of the record lacked merit, as no party requested that the chancellor find the fact specifically and state separately her conclusions of law as required. McCarley v. McCarley, 270 So. 3d 218 (Miss. Ct. App. 2018).

Because the appellate court was unable to determine the basis of a chancellor's decision, as the record contained neither a transcript of the proceedings in the trial court, nor any factual or legal foundation for the chancellor's decision to modify a decree, the case was remanded to the trial court for the chancellor to create a record of his factual findings as well as the legal basis for his decision. Daley v. Daley, 909 So. 2d 106 (Miss. Ct. App. 2005).

Rule 4.03. No interruption while rendering opinion.

While the Chancellor is rendering an oral opinion in any action he shall not be interrupted by anyone. After he has concluded, counsel for either party may make such suggestions or request such further findings of law or fact as may be deemed proper. The right to make suggestions or requests shall not be construed as the right to reargue the case or any part thereof. If the Chancellor desires reargument in whole or in part he will request it.

5.00 JUDGMENTS

Rule 5.01. Judgments — Form of caption.

Every Judgment shall show the number and style of the action at the top and have a caption showing the nature thereof.

Rule 5.02. Judgments — Contents and form.

Every Judgment shall adjudicate such facts as to show that the Court has lawful authority to render it. In every action where relief is granted the several items or elements thereof shall be stated in a separate paragraph which shall be numbered consecutively. Every Judgment shall be so drawn as to be definite and certain in all its terms and provisions. In all litigated cases the final Judgment shall tax the costs as the Chancellor may require and direct the issuance of appropriate process for its enforcement. No exception to the action of the Court may be embraced in any Judgment, but the party adversely affected thereby shall be deemed to have duly excepted thereto.

JUDICIAL DECISIONS

In general.

Because the appellate court was unable to determine the basis of a chancellor's decision, as the record contained neither a transcript of the proceedings in the trial court, nor any factual or legal foundation for the chancellor's decision to modify a decree, the case was remanded to the trial court for the chancellor to create a record of his factual findings as well as the legal basis for his decision. Daley v. Daley, 909 So. 2d 106 (Miss. Ct. App. 2005).

Rule 5.03. Consent judgments must be approved and signed by both counsel.

Every consent Judgment must be approved and signed by counsel for all parties to the suit who may be represented by counsel and interested in or affected thereby before being presented to the Chancellor for his signature. The Court may also require the parties to sign.

JUDICIAL DECISIONS

Application.

Chancery court did not abuse its discretion by ruling that the signatures of an ex-husband and his attorney on an agreed order were unnecessary because the hearing transcript reflected that the ex-husband understood the agreement that was read into the record and that it would be put into writing and become the court's order, and his attorney made no objection at the hearing to the entry of the order. Pearson v. Browning, 200 So. 3d 1080 (Miss. Ct. App. 2016).

Trial court did not err in setting the judgment of divorce aside only as it pertained to the ruling on alimony and equitable division of savings and retirement accounts because the wife's consent was not required for the order; the original consent agreement complied with the rule because the wife and husband and signed it. Bell v. Stevenson, 158 So. 3d 1229 (Miss. Ct. App. 2015).

In a child custody and support modification action, the issue was whether the lower court committed reversible error by approving and signing a consent judgment which was not approved or signed by the father or his attorney. Further, no terms were ever announced in open court, recorded by a court reporter, and approved by counsel as required by Miss. Unif. Ch. Ct. R. 3.09 and 5.03,; the appellate court held that given those facts, it was without proof of substantial credible evidence to support the chancellor's order, and the order was vacated and the matter remanded for proper compliance with the aforementioned rules. Samples v. Davis, 904 So. 2d 1061 (Miss. 2004).

Rule 5.04. Judgment must be submitted to opposing counsel and chancellor — When.

In all litigated actions, the attorney who shall be directed to draw the Judgment shall submit the same to opposing counsel for criticism as to form only, and shall present the same to the Chancellor within ten (10) calendar days after being directed to draw the judgment unless otherwise permitted.

JUDICIAL DECISIONS

Simultaneous submission.

This rule was complied with where counsel advised opposing counsel by letter to the chancellor that he was enclosing the proposed judgment and was forwarding opposing counsel a copy of the same for his criticism pursuant to the rule since opposing counsel was thereby afforded an opportunity to scrutinize the proposed order as to its form and the chancellor had an opportunity to examine any objections as to the form of the judgment. McCord v. Spradling, — So. 2d —, 2000 Miss. App. LEXIS 591 (Miss. Ct. App. Dec. 12, 2000), affirmed in part and reversed in part by, remanded in part by 830 So. 2d 1188, 2002 Miss. LEXIS 356 (Miss. Nov. 21, 2002).

Counsel properly submitted a proposed judgment to opposing counsel for criticism where he advised opposing attorney by letter to the chancellor that he was enclosing the proposed judgment and was forwarding opposing counsel a copy of same for his criticism; although counsel did not submit the proposed judgment to opposing counsel prior to sending it to the chancellor, opposing counsel still had an opportunity to scrutinize the proposed order as to its form. McCord v. Spradling, — So. 2d —, 1999 Miss. App. LEXIS 349 (Miss. Ct. App. June 22, 1999), opinion withdrawn by, substituted opinion at 2000 Miss. App. LEXIS 591 (Miss. Ct. App. Dec. 12, 2000).

Rule 5.05. Presentation of court file.

Unless excused by the Court, when attorneys personally present to the Court any proposed order, they shall also present the court file for the convenience of the Court.

Rule 5.06. Judgment must be delivered to clerk.

As soon as a Judgment has been signed by the Chancellor, it shall be promptly delivered to the Clerk of the proper Court for record in the minute book. Any person to whom any Judgment may be entrusted by the Chancellor for delivery to the Clerk who shall either willfully or negligently fail to promptly deliver it to the Clerk, shall be guilty of a contempt.

6.00 RULES CONCERNING PROBATE MATTERS

Rule 6.01. Attorney must be retained.

(A) Every fiduciary must, unless licensed to practice law in Mississippi, retain an attorney or firm of attorneys to provide representation, advice and assistance during the entire term of the fiduciary's appointment.

(B) Compensation for the attorney shall be fixed and approved by the chancellor.

(C) Once an attorney has once entered an appearance for a fiduciary, in any respect, the attorney shall be permitted to withdraw only with the consent of the chancellor, with notice to the client and any adverse party as required by UCCR 1.08.

(D) An attorney who is negligent or unfaithful in any respect may be discharged by order of the court on motion of the fiduciary or on motion of the court.

(E) The practice of employing different attorneys at the will of the fiduciary will not be tolerated.

(F) The chancellor may relieve a fiduciary of the obligation to retain an attorney in matters involving guardianship (of the person only), and in cases where the court finds that it will impose an undue or unnecessary financial burden on the ward's estate. All other duties of a fiduciary remain the same with or without representation. (Amended effective January 1, 2020.)

JUDICIAL DECISIONS

Attorney's fees.

Chancellor was manifestly in error in approving $90,360 in attorney's fees which executor paid himself, where executor, during a seven and a half year period, withdrew his own fees at will in complete disregard for statutory obligations and chancery court rules. McCaffrey v. Fortenberry, 592 So. 2d 52 (Miss. 1991).

Rule 6.02. Fiduciaries and attorney must be diligent.

(A) Every fiduciary and his attorney must be diligent in the performance of his their duties. They must see to it that publication for creditors is promptly made, that inventories, appraisements, accounts and all other reports and proceedings are made, done, filed and presented within the time required by law, and that the estates of decedents are completed and assets distributed in a timely manner.

(B) In guardianships and conservatorships an attorney must be faithful to both fiduciary and ward.. If it appears to the attorney that the fiduciary is not properly performing duties required by the law then the attorney shall promptly notify the court in which the estate is being administered.

(C) Until relieved of fiduciary duties by court order, every fiduciary shall notify the chancery clerk in writing of every change of address not later than five days after such change. The notice shall include the civil action number and the name of the fiduciary.

(D) Failure to observe this rule, unless just cause exists, shall constitute contempt for which the chancellor will impose appropriate penalties (Amended effective January 1, 2020.)

JUDICIAL DECISIONS

Mismanagement.

Finding against the executrix was appropriate because she mismanaged the decedent's estate and was thus accountable for her actions. She further failed to provide any substantiation for her expenditure of a substantial portion of the estate's assets and failed to fulfill her required duties under Miss. Unif. Ch. Ct. R. 6.02. Frazier v. Shackelford (In re Estate of Carter), 912 So. 2d 138 (Miss. 2005).

Rule 6.03. Statement appended to annual accounts.

(A) Every fiduciary shall attach to each annual account a list or statement of all assets, real and personal, of the estate.

(B) If the annual account consists of money, bonds or other securities negotiable by delivery, then the statement shall also show the name of the bank where the same is deposited or kept.

(C) Verification of account balances in the form of statements issued by the depository showing the balance at the beginning of the accounting period, and the most recent statement at the end of the accounting period shall be attached.

(D) If the assets consist of loans made by the fiduciary or the predecessor in the fiduciary office, then the statement shall show to whom and when the loan was made, the amount remaining unpaid, how secured, whether all taxes have been paid on the property mortgaged or pledged as security for the loan, and whether or not the security is sufficient. (Amended effective January 1, 2020.)

Rule 6.04. What vouchers must show.

Every disbursement shown by an account of fiduciary must be supported by proper vouchers, which shall conform to the requirements of Miss. Code Ann.

(1972) Section 91-7-279 and Miss. Code Ann. Section 93-13-71. Every such voucher shall consist of a receipt or canceled bank check showing to whom and for what purpose the money was paid. All vouchers for claims paid which arose during the lifetime of a decedent or the sanity of a person of unsound mind shall show that the claim was properly probated, allowed and registered. This rule is modified as to banks or trust companies which are subject to the supervision of the Department of Bank Supervision of the State of Mississippi, or The Comptroller of the Currency of the United States to the extent they are covered by Miss. Code Ann. (1972) Section 91-7-277.

Rule 6.05. Disbursements and receipts annual and final accounts.

Where disbursements are shown on an annual or final account there shall be included therewith the voucher number, the date of the disbursement, the name of the payee, the purpose of the disbursement and the date of any court order authorizing such disbursement.

Where receipts are shown on such accounts there shall be included the date of the receipt, the name of the payor and on what account payment is made.

JUDICIAL DECISIONS

Incomplete accounting.

There was no error with a chancery court's determination that an accounting submitted by an executor was incomplete because the accounting generally failed to disclose the purpose of the various expenses. Further, there was no merit to the claim that the chancery court penalized the executor for failing to file vouchers as the chancery court made it clear that it did not for the fact that the purposes of the expenditures were not disclosed. In re Estate of Thomas v. Thoms, 28 So. 3d 627 (Miss. Ct. App. 2009), writ of certiorari denied by 27 So. 3d 404, 2010 Miss. LEXIS 91 (Miss. 2010).

Rule 6.06. Lost vouchers-how substituted.

In case of the lost or destruction of any original voucher, the fiduciary may procure and present for allowance a duplicate or a receipt from the person or corporation to whom the money was paid or the property was delivered, which shall show on its face that it is a duplicate of the original voucher so lost or destroyed. The Chancellor may, if the proof be sufficient, allow the same as though the original had been produced.

Rule 6.07. Claims arising after death of decedent.

Claims arising after the death of a decedent, such as funeral bills, expenditures for monuments, attorney's fees, and the like must be approved by the Chancellor before payment. Otherwise, payment thereof will be at the risk of subsequent disapproval by the Chancellor as to the propriety or reasonableness thereof.

JUDICIAL DECISIONS

In general.
Attorney's fees.

In general.

An executor or executrix who acts without prior court approval does so at his or her peril; that is not to say, however, that a fiduciary who makes good faith expenditures is not entitled to reimbursement based solely on the fact that they were made prior to court approval. Pallatin v. Jones, 638 So. 2d 493 (Miss. 1994).

Attorney's fees.

Chancellor was manifestly in error in approving $90,360 in attorney's fees which executor paid himself, where executor, during a seven and a half year period, withdrew his own fees at will in complete disregard for statutory obligations and chancery court rules. McCaffrey v. Fortenberry, 592 So. 2d 52 (Miss. 1991).

Amount allowable as attorney's fees for services rendered in administration of an estate rests within sound discretion of chancery court. Harper v. Harper, 491 So. 2d 189 (Miss. 1986).

Chancellor did not abuse his discretion in allowing payment of attorney's fees for services rendered prior to date on which estate could and should have been closed, and surcharging balance of legal fees incurred after that date. Harper v. Harper, 491 So. 2d 189 (Miss. 1986).

Rule 6.08. Allowance for support of ward.

Every petition for an allowance for the support of a ward shall show the amount of his current estate, the estimated amount of his monthly or yearly income, and the amount of the previous allowance. Where the ward is a minor, any request of a guardian to expend funds of the ward for necessities which are the responsibility of the parent shall not be considered unless the guardian, under oath, justifies the reason for such proposed expenditures.

Rule 6.09. Petitions for authority to make loans or investments.

Every petition for authority to loan or invest the funds of a ward shall show the amount to be loaned or invested, the kind and description of the security offered or investment proposed and the value thereof. In case of a loan, to whom and the time for which it is to be made, and the rate of interest it is to bear. In all cases where a loan is proposed, the affidavits of two or more credible persons touching the value of the security offered must be attached to the petition filed with the papers in the action, or witnesses produced before the Chancellor.

Rule 6.10. Petitions for authority to compromise claims for wrongful death or injury.

Every petition for authority to compromise and settle a claim for wrongful death or injury shall set forth the facts in relation thereto and the reason for such compromise and settlement and the amount thereof. The material witnesses concerning the injury or death and the damages resulting therefrom shall be produced before the Chancellor for examination. Where counsel representing the petition has investigated the matter and advised settlement, he shall so appear and give testimony touching the result of his investigation.

On "future payment" or "structured settlement" cases, a certified copy of any insurance policy or other security guaranteeing payment shall be made a part of the court file within ninety (90) days from the date of the entry of the judgment or decree authorizing the settlement, unless good cause is shown.

Rule 6.11. Petitions for commissions.

Every petition by a fiduciary for the allowance of commissions, or for compensation for extra services and expenses, shall show the total amount of the estate coming into his hands, the total amount disbursed, the balance on hand, the nature and extent of the service rendered and expense incurred by him, and the total amount previously allowed to him on account thereof. Fees for fiduciaries and attorneys shall not be based on the value of any real property.

JUDICIAL DECISIONS

Timeliness of inventory.

Former conservator violated Miss. Unif. Ch. Ct. R. 6.11 by applying to receive fees from the ward's estate before he had filed an inventory of the estate. Bardwell v. Bardwell (In re Bardwell), 849 So. 2d 1240 (Miss. 2003).

Rule 6.12. Petitions for allowance of attorney's fees.

Every petition by a fiduciary or attorney for the allowance of attorney's fees for services rendered shall set forth the same facts as required in Rule 6.11, touching his compensation, and if so, the nature and effect thereof. If the petition be for the allowance of fees for recovering damages for wrongful death or injury, or other claim due the estate, the petition shall show the total amount recovered, the nature and extent of the service rendered and expense incurred by the attorney, and the amount if any, offered in compromise before the attorney was employed in the matter. In such cases, the amount allowed as attorney's fees will be fixed by the Chancellor at such sum as will be reasonable compensation for the service rendered and expense incurred without being bound by any contract made with any unauthorized persons. If the parties make an agreement for a contingent fee the contract or agreement of the fiduciary with the attorney must be approved by the Chancellor. Fees on structured settlements shall be based on the "present cash value" of the claim.

JUDICIAL DECISIONS

Contigency fee not subject to rule.
Excessive fees.
Fee found appropriate.
Lack of prior approval.

Contigency fee not subject to rule.

Where the attorneys in fact entered into a contract of employment with an attorney to pursue a personal injury claim on the ward's behalf, and the attorney, primarily out of caution, later submitted a proposed settlement to the chancery court for approval, the chancery court abused its discretion in reducing the lawyer's fee from a 40 percent contingency fee as provided in the contract to a 33 1/3 percent contingency fee. The contract was not one entered into pursuant to a traditional probate matter and it was not a contract within the parameters of Miss. Unif. Ch. Ct. R. 6.12; the practical effect of the chancellor's decision, upheld by the court of appeals, was a judicial abrogation of the provisions of the Uniform Durable Power of Attorney Act found in Miss. Code Ann. §§ 87-3-101 through 87-3-113 and it also constituted a failure to uphold Miss. Const. art. 3, § 16 and U.S. Const. Art. 1, § 10, cl. 1, which prohibited the impairment of obligations of contracts. In re Savell v. Renfroe, 876 So. 2d 308 (Miss. 2004).

Excessive fees.

Chancellor was manifestly in error in approving $90,360 in attorney's fees which executor paid himself, where executor, during a seven and a half year period, withdrew his own fees at will in complete disregard for statutory obligations and chancery court rules. McCaffrey v. Fortenberry, 592 So. 2d 52 (Miss. 1991).

Fee found appropriate.

Although an attorney's written filings failed to fully comply with the Mississippi Uniform Chancery Court Rules, no error was found because all of the required information was presented to the chancery court during the hearing, the attorney testified to the nature and extent of the service rendered and expense incurred, the attorney's experience, the novelty of the legal questions involved, and the reasonableness of the fee. In re Wilhite, 121 So. 3d 301 (Miss. Ct. App. 2013).

Allowance of attorney's fee of $1500 was not an abuse of discretion, where lower court knew whole situation, manner in which will was probated, necessary advice to executor in management of estate, final account, and preparation thereof. Scott v. Hollingsworth, 487 So. 2d 811 (Miss. 1986).

Lack of prior approval.

Chancellor did not abuse his discretion in awarding attorney's fees in a minor's personal injury action because, while the chancellor did not recite the case law or professional conduct factors in explaining his division of fees between the attorney and his successor, the chancellor correctly referenced the Uniform Chancery Court Rules, the attorney had done very little work on the action at the time of his termination and did not submit his contract for approval before being terminated. Foster v. Kotsakos, 147 So. 3d 896 (Miss. Ct. App. 2014).

Reasonableness of contingent fee would be examined on remand, where contingent fee agreement had not been approved by chancellor or signed by most of the beneficiaries of the estate. Pannell v. Guess, 671 So. 2d 1310 (Miss. 1996).

Rule 6.13. Pleading must be sworn to.

All pleadings, including accounts and reports, filed by a fiduciary shall be personally signed and sworn to by him. If required by the Chancellor he must produce proof touching the truth of the facts therein stated.

JUDICIAL DECISIONS

Judicial conduct.

Chancellor violated the Code of Judicial Conduct because he signed ex parte orders concerning a ward, and the signature of the attorney for the ward's mother, without additional notarization, was insufficient support for an order touching upon the administration of the conservatorship; by accepting unsworn petitions and failing to conduct further inquiry, the chancellor exhibited negligence with regard to the administration of the ward's estate. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

Rule 6.14. Court costs must be paid annually.

Every fiduciary shall at least annually pay all accrued court costs and present the clerk's receipt therefor as a voucher on his next accounting.

Rule 6.15. Copy of will filed with original.

Every petition to probate a Will must have a copy of the Will attached thereto.

Rule 6.16. [Deleted].

Rule 6.17. Failure to file accountings.

If, without just cause, an attorney fails to file accountings or other matters in probate cases (estates, guardianships and conservatorships) after being so directed in writing by the Court, the Court may consider such misconduct as contempt.

7.00 RULES CONCERNING VACATION MATTERS

Rule 7.01. [Deleted].

Rule 7.02. Return envelope must be enclosed.

When any attorney or Clerk shall forward papers to the Chancellor requesting a response or the return of a judgment, order or paper, a self-addressed, stamped envelope shall be enclosed for the return thereof to the Clerk by the Chancellor. If the attorney shall desire a copy of a judgment or order returned to him, he shall furnish such copy and self-addressed stamped envelope for the return thereof. All mail to the Chancellor should be fully prepaid.

Rule 7.03. Removal of disability.

In all cases for the removal of disability of a resident minor, the minor must be produced before the Chancellor for observation and examination unless specially excused from so doing. Except in extraordinary and exceptional cases, the Chancellor will decline to remove generally the disability of any minor who is under eighteen years of age. In all such cases, oral proof or affidavits must be produced.

JUDICIAL DECISIONS

In general.

Plaintiff's tort action based on events that occurred when he was 19 years old was timely as it was filed less than three years after his 21st birthday; removal of the disability of minority did not arise automatically upon the occurrence of specified events except for reaching the age of 21, and thus, plaintiff's emancipation did not trigger the automatic removal of disability of minority. Baker v. RR Brink Locking Sys., 721 F.3d 716 (5th Cir. 2013).

8.00 RULES CONCERNING DIVORCE

Rules 8.01 and 8.02. [Deleted].

Rule 8.03. Corroboration.

In all uncontested divorce cases, except irreconcilable differences, the testimony of the Plaintiff must be substantially corroborated.

JUDICIAL DECISIONS

In general.
Sufficient corroboration.

In general.

It was clear from the transcript of a hearing in an uncontested divorce case that the husband corroborated his wife's testimony that she had experienced habitual, cruel and inhuman treatment by the husband, because the transcript revealed the husband's testimony indicating that there were physical altercations and admitting to hitting his wife with an open hand. Shavers v. Shavers, 982 So. 2d 397 (Miss. 2008).

Grant of divorce in favor of the husband on the grounds of habitual cruel and inhuman treatment was inappropriate pursuant to Miss. Unif. Ch. Ct. R. 8.03 because there was no corroborating testimony. Heatherly v. Heatherly, 914 So. 2d 754 (Miss. Ct. App. 2005).

Evidence was insufficient to support the trial court's granting of a divorce on the ground of habitual, cruel, and inhuman treatment because (1) in the course of the 19-year marriage, the wife cited to one isolated physical attack and verbal threat, and the other accusations of the husband's mean tricks, name-calling, and refusal to sleep with her, fell more in the categories of mere unkindness, rudeness, and incompatibility then cruelty and (2) the corroborative evidence required by Miss. Unif. Ch. Ct. R. 8.03 and provided by the daughter was inconsistent with the wife's testimony that the physical abuse was limited to the one choking incident; thus, the appellate court reversed and vacated the trial court's judgment granting the wife a divorce based upon the statutory ground of habitual, cruel, and inhuman treatment pursuant to Miss. Code Ann. § 93-5-1. Reed v. Reed, 839 So. 2d 565 (Miss. Ct. App. 2003).

Even where a divorce on grounds of cruel and inhuman treatment is uncontested, there must be corroboration of plaintiff's testimony. Peterson v. Peterson, 648 So. 2d 54 (Miss. 1994).

Sufficient corroboration.

Where a wife alleged that the husband committed adultery and physically and verbally abused the wife by hitting, punching, trying to strangle, and using a belt to whip the wife, it was error to deny a divorce based on the grounds of habitual cruel and inhuman treatment because (1) the wife offered testimony of physical and verbal abuse, (2) the wife provided sufficient corroboration to support the claim, and (3) the wife did not condone the abuse. Kumar v. Kumar, 976 So. 2d 957 (Miss. Ct. App. 2008).

Rule 8.04. Irreconcilable differences divorce.

In all irreconcilable differences divorce actions (no-fault), the attorney is required to appear before the Court with the file to request approval of the Agreement and to obtain the signature of the Chancellor to the *Judgment for Divorce-Irreconcilable Differences*.

The attorney must be prepared to answer all inquiries that may be raised by the Court.

Rule 8.05. Financial statement required.

Unless excused by Order of the Court for good cause shown, each party in every domestic case involving economic issues and/or property division shall provide the opposite party or counsel, if known, the following disclosures:

(a) A detailed written statement of actual income and expenses and assets and liabilities, such statement to be on the forms attached hereto as Exhibit "A", copies of the preceding year's Federal and State Income Tax returns, in full form as filed, or copies of W-2s if the return has not yet been filed; and, a general statement of the providing party describing employment history and earnings from the inception of the marriage or from the date of divorce, whichever is applicable; or,

(b) By agreement of the parties, or on motion and by order of the Court, or on the Court's own motion, a more detailed statement on the form attached hereto as Exhibit "B".

The party providing the required written statement shall immediately file a Certificate of Compliance with the Chancery Clerk for filing in the court file.

A party filing a document containing personal identifiers and/or sensitive information and data may (1) file an unredacted document under seal; this document shall be retained by the court as part of the record; or, (2) file a reference list under seal. The reference list shall contain the complete personal data identifiers and/or the complete sensitive information and data required by this Rule.

The disclosures shall be made by the plaintiff not later than the time that the defendant's Answer is due, and by the defendant at the time that the defendant's Answer is due, but not later than 45 days from the date of the filing of the commencing pleading. The Court may extend or shorten the required time for disclosure upon written motion of one of the parties and upon good cause shown.

The disclosures shall include any and all assets and liabilities, whether marital or non-marital. A party is under a duty to supplement prior disclosures if that party knows that the disclosure, though correct when made, no longer accurately reflects any and all actual income and expenses and assets and liabilities, as required by this Rule.

When offered in a trial or a conference, the party offering the disclosure statement shall provide a copy of the disclosure statement to the Court, the witness and opposing counsel.

This rule shall not preclude any litigant from exercising the right of discovery, but duplicate effort shall be avoided.

The failure to observe this rule, without just cause, shall constitute contempt of Court for which the Court shall impose appropriate sanctions and penalties. (Amended effective July 1, 1996; amended effective January 8, 2009, to provide procedures for filing documents containing sensitive personal information: amended effective July 1, 2011, to incorporate an optional long form financial statement; amended effective July 1, 2012, to provide a duty to supplement disclosures.)

JUDICIAL DECISIONS

Adjusted gross income.
Change in circumstances not shown.
Credit against future child support obligations.
Earned income.
Expenses.
Failure to disclose.
Judicial discretion proper.
Lack of statement excused.
Submission of false statement.
Valuation.

Adjusted gross income.

Father's financial statement understated his net monthly income as $5,201, because the final months of 2016 showed gross earnings of approximately $10,000 per month and net pay, after deductions, of approximately $7,000 per month; and the father should have paid child support equal to 22 percent of his adjusted gross income. Leblanc v. Leblanc, 271 So. 3d 494 (Miss. Ct. App. 2018).

In divorce proceedings, a husband did not commit fraud upon the chancery court by listing his monthly income as $ 15,000 on the Miss. Unif. Ch. Ct. R. 8.05 statement and shortly thereafter listing his income as $ 35,000 on a loan application because the chancellor addressed the discrepancy and found the amount of the loan application was an average of the husband's last two federal tax returns and did not consider the bankruptcy of a client of the husband's law firm and its financial impact on the firm; the chancellor found the husband's monthly gross income was $ 19,000. Dogan v. Dogan, 98 So. 3d 1115 (Miss. Ct. App. Oct. 9, 2012).

In a divorce case, a chancellor did not err in determining a husband's adjusted gross income by using evidence from his financial statement, a tax return, and the testimony of witnesses; moreover, the chancellor correctly applied Miss. Code Ann. § 43-19-103 in determining the amount of child support. Spahn v. Spahn, 959 So. 2d 8 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 958 So. 2d 1232, 2007 Miss. LEXIS 361 (Miss. 2007).

Change in circumstances not shown.

For purposes of awarding alimony, the wife's income and expenses in her financial statement under this rule had not been updated since 2006 and were not accurate as her monthly expenses had been overstated, and her income had not been adjusted for a job change that occurred in 2008. Archie v. Archie, 126 So. 3d 937 (Miss. Ct. App. 2013).

Mother was not entitled to an increase in child support because, based on the evidence, including the parties' Miss. Unif. Ch. Ct. R. 8.05 financial statements, she failed to show a material change in circumstances; the fact that the parties' children had aged was not determinative absent a showing that a corresponding increase in expenses was not foreseeable when the parties' first stipulated to child support, and there was no showing of a material change based on one child's medical issues as it was not shown that those issues would persist. McNair v. Clark, 961 So. 2d 73 (Miss. Ct. App. 2007).

Credit against future child support obligations.

There was substantial evidence to find a father in contempt for failing to pay child support because he was not entitled to a credit toward future child support obligations or an overpayment of support during the time the parties were in a de-facto marital relationship; the father was supporting his family and enjoying the benefits of the familial relationship as if the parties were married, and he had the ability to pay due to a tax refund and the figures presented in his financial statement. Wilkinson v. Wilkinson, — So. 3d —, 2019 Miss. App. LEXIS 77 (Miss. Ct. App. Feb. 26, 2019).

Earned income.

Chancery court did not err in awarding a husband a larger share of the marital estate as lump sum alimony because although the husband represented his income on his statement as $ 1,500 per month, which was more than the chancery court seemed to accept, there was no testimony at trial about that number and nothing to make it manifest error for the chancery court to find that five years of tax returns were a truer reflection of the husband's ability to earn money from a contracting business. Renfro v. Renfro, — So. 3d —, 2017 Miss. App. LEXIS 51 (Miss. Ct. App. Jan. 31, 2017), writ of certiorari denied by 223 So. 3d 787, 2017 Miss. LEXIS 345, 2017 WL 3917702 (Miss. Aug. 24, 2017), writ of certiorari denied by 2017 Miss. LEXIS 342 (Miss. Aug. 24, 2017).

Chancery court decision to deny a mother's request for payment of an arrearage was manifestly wrong and clearly erroneous because the nontaxable federal payments a father received for basic allowable housing and basic allowable subsistence were a form of earned income; the United States Navy paid the father additional income for his housing and subsistence, and those payments were earned by the father and assisted him with the payment of his monthly expenses. Price v. Snowden, 187 So. 3d 159 (Miss. Ct. App. 2015), writ of certiorari denied en banc by 186 So. 3d 854, 2016 Miss. LEXIS 127 (Miss. Mar. 17, 2016).

Expenses.

Record supported the chancellor's finding that additional, permanent periodic alimony was necessary because without a periodic alimony award, the wife would have been forced to draw on her lump-sum award for the rest of her life, and that was not a sufficient resource; there was a significant income disparity between the parties' incomes, and the husband had $41,548 left over after expenses while the wife had $300 left over each month. Descher v. Descher, — So. 3d —, 2020 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 14, 2020).

Chancellor's award of child support was supported by the record, and his decision was not manifest error nor an abuse of discretion, because the children were accustomed to a standard of living where the husband made $ 71,377 per month, and they were living on $ 7,500 per month; the wife's financial declaration did not cap out the maximum amount of child support the chancellor could grant, and the husband's monthly income and earning potential far surpassed hers. Descher v. Descher, — So. 3d —, 2020 Miss. App. LEXIS 12 (Miss. Ct. App. Jan. 14, 2020).

There was no manifest error in the chancery court's failure to consider as an obligation an automobile payment a husabnd listed on his financial statement because after determining that the financial statement failed to provide any evidence that the husband owned an automobile, the chancery court concluded that no such payments could be considered. Baswell v. Baswell, 217 So. 3d 753 (Miss. Ct. App. 2017).

Chancery court did not err by reducing the expenses a husband provided on his financial statement because the husband listed several expenses that were voluntary rather than mandatory; some of the amounts the husband listed for other expenses were unreasonable since they covered the husband, his fiancé, and his fiancé's grandchildren. Baswell v. Baswell, 217 So. 3d 753 (Miss. Ct. App. 2017).

Chancery court did not err in awarding a husband a larger share of the marital estate as lump sum alimony on remand because the correct legal standard was applied, and the findings were supported by substantial evidence; the chancery court did not err in failing to take into account the fact that the husband did not contribute to paying for his paramour's home and vehicle because the husband never claimed rent or a house note as expenses in his testimony or his disclosure under the rule. Renfro v. Renfro, — So. 3d —, 2017 Miss. App. LEXIS 51 (Miss. Ct. App. Jan. 31, 2017), writ of certiorari denied by 223 So. 3d 787, 2017 Miss. LEXIS 345, 2017 WL 3917702 (Miss. Aug. 24, 2017), writ of certiorari denied by 2017 Miss. LEXIS 342 (Miss. Aug. 24, 2017).

Failure to disclose.

Chancery court did not err in awarding the husband funds from the wife's thrift savings plan after the wife intentionally filed a false financial statement that did not include the value of her thrift savings plan because the omission amounted to willful and contumacious contempt. Nelson v. Nelson, 271 So. 3d 613 (Miss. Ct. App. 2018).

It was error for the chancellor to attempt to distribute the marital estate without requiring both parties to file financial disclosure forms. Because of this failure, there was no information upon which the court could have made a determination of marital and nonmarital assets, and a subsequent equitable division of the marital assets. Speights v. Speights, 270 So. 3d 968 (Miss. Ct. App. 2018).

Because neighbors failed to provide evidence sufficient to enable the trial court to make a determination of their net worth, the trial court was not required to apply the statutory formula based on speculation or guesswork; the neighbors claimed that their statement was accurate, but, they admitted that the statement failed to account for the proceeds of a mortgage loan, which they had only recently obtained following the hearing on property owners' contempt petition. Moore v. McDonald, 210 So. 3d 563 (Miss. Ct. App. 2017).

Chancery court erred in awarding a $5,000 judgment to a wife as an equitable distribution of the parties' debt because the wife did not introduce any documentary evidence to support her claim, and the record did not indicate that she filed a financial statement. Norris v. Norris, 174 So. 3d 923 (Miss. Ct. App. 2015).

Trial court did not abuse its discretion by denying a wife's motion to compel discovery because the information the wife sought was contained in the financial disclosure form. Bell v. Stevenson, 158 So. 3d 1229 (Miss. Ct. App. 2015).

Order which clarified that an affirmed judgment included an award to wife of 40 percent of husband's retirement account was proper because nothing in the order changed or contradicted the affirmed judgment. Instead, the order merely clarified the scope of the judgment so that wife could execute a QDRO on the account. Such clarification was necessary because husband failed to identify, either on his Miss. Unif. Ch. Ct. R. 8.05 financial declaration form or at trial, the name of his pension-fund manager. Husband did not argue that the retirement account had nothing to do with his employment. Cotton v. Cotton, 105 So. 3d 1184 (Miss. Ct. App. 2012).

In calculating child support, the trial court erred in arbitrarily determining a husband's monthly income to exclusion of the undisputed evidence he provided, due to his failure to comply with Miss. Unif. Ch. Ct. R. 8.05, because the remedy for his violation was to hold him in contempt, not to disregard the credible evidence he provided. Collins v. Collins, 112 So. 3d 428 (Miss. 2013).

Chancellor erred in failing to find, before awarding separate maintenance to a wife, that no significant marital misconduct by the wife materially contributed negatively to the separation, and the wife also failed to establish the husband refused to support her after the separation, due to the significant omissions in the wife's Miss. Unif. Ch. Ct. R. 8.05 financial statement. Jackson v. Jackson, 114 So. 3d 768 (Miss. Ct. App. 2013).

Wife's failure to disclose a retirement account under Miss. Unif. Ch. Ct. R. 8.05 did not merit reopening a divorce case. The husband did not explain why he did not know about or could not have discovered the account, the amount of which was insignificant. McNeese v. McNeese, 119 So. 3d 264 (Miss. 2013).

Chancery court did not abuse its discretion in finding a wife committed a fraud upon the court by filing a substantially false Miss. Unif. Ch. Ct. R. 8.05 financial statement because the wife was aware of additional debts and bank accounts and failed to disclose them to the chancery court during its attempt to make an equitable divorce decree; therefore, the six-month time limitation of Miss. R. Civ. P. 60(b) did not apply, and the chancery court was within its discretion in vacating the original divorce judgment and altering the terms of that judgment. Finch v. Finch, 137 So. 3d 314 (Miss. Ct. App. 2012), affirmed in part and reversed in part by, remanded by 137 So. 3d 227, 2014 Miss. LEXIS 33 (Miss. Jan. 16, 2014).

There was no manifest error in basing the amount of a husband's child support obligation on his earning capacity because the husband was not truthful in the representations that he made in his financial statement, under Miss. Unif. Ch. Ct. R. 8.05. Swiderski v. Swiderski, 18 So. 3d 280 (Miss. Ct. App. 2009), writ of certiorari denied by 19 So. 3d 82, 2009 Miss. LEXIS 465 (Miss. 2009).

There was no showing that the chancery court failed to enforce compliance with Miss. Unif. Ch. Ct. R. 8.05, which required the parties to submit financial statements detailing income, expenses, assets, and liabilities. While the father argued on appeal that the mother's financial statement did not adequately distinguish between her expenses and the children's expenses, the financial statement was accepted by the father at the modification hearing without objection, and he acknowledged that the expenses reflected in the financial statement were reasonable. Reid v. Reid, 998 So. 2d 1032 (Miss. Ct. App. 2008).

Chancery court properly dismissed a wife's motion for contempt and modification of a property settlement in a divorce proceeding where the husband did not commit fraud by failing to disclose a 401(k) account; the existence of the 401(k) account was mentioned in the financial statement provided to the wife, even though it was not in the manner preferred. Shaw v. Shaw, 985 So. 2d 346 (Miss. Ct. App. 2007), writ of certiorari denied en banc by 977 So. 2d 1144, 2008 Miss. LEXIS 135 (Miss. 2008).

Appellate court declined to reverse the findings of the chancellor in favor of the mother because the father and daughter failed to provide any estimate regarding the value of the marital estate; although testimony indicated that there was additional personal property that had not been taken into account in the mother's Miss. Unif. Ch. Ct. R. 8.05 disclosure, no effort was made by either party to illuminate the value of that additional property. King v. King, 946 So. 2d 395 (Miss. Ct. App. 2006), writ of certiorari denied en banc by 947 So. 2d 960, 2007 Miss. LEXIS 52 (Miss. 2007).

Where the parties were separated several years and the husband won $ 2,600,000 in a lottery shortly before the divorce but did not disclose same, as to the wife's modification action, a remand was required for a determination under the applicable case law as to whether the lottery ticket constituted marital property under Hemsley, and if so, for an equitable division pursuant to Ferguson; in light of the husband's failure to have disclosed said winnings, and in light of Miss. Unif. Ch. Ct. R. 8.05, the chancery court also erred in denying the wife's motion for contempt. Kalman v. Kalman, 905 So. 2d 760 (Miss. Ct. App. 2004).

Judicial discretion proper.

Chancery court did not abuse its discretion in awarding additional attorney's fees to a mother beyond the amount for contempt because it examined the mother's financial statement and her monthly bank statements found that the mother had the inability to pay a portion of her attorney's fees; the father had the ability to pay a portion of the mother's fees because his financial statement had a surplus of income above his expenses. Wilkinson v. Wilkinson, — So. 3d —, 2019 Miss. App. LEXIS 77 (Miss. Ct. App. Feb. 26, 2019).

While a chancellor erred in including rentals in a husband's income, the error was harmless as the chancellor discussed and made specific findings for child support under Miss. Code Ann. §§ 43-19-101, 43-19-103 and properly relied on the parties' Miss. Unif. Ch. Ct. R. 8.05 disclosure forms and other documentary evidence. Collins v. Collins, 112 So. 3d 460 (Miss. Ct. App. 2012), affirmed in part and reversed in part by, remanded by 112 So. 3d 428, 2013 Miss. LEXIS 285 (Miss. May 9, 2013).

In their divorce case, the parties' Miss. R. Civ. P. 8.05 declarations were "very unspecific," and they presented conflicting testimony as to the value of their property. Since neither party offered expert testimony as to the value of said property, and because there was no ongoing business or unusual or unique asset in the marital estate that might have required expert testimony, the chancellor properly derived a value for the property based primarily upon the Rule 8.05 declarations of the parties. Studdard v. Studdard, 894 So. 2d 615 (Miss. Ct. App. 2004).

Lack of statement excused.

In a divorce action, the chancery court did not err in not requiring the parties to file a financial statement as child support and alimony were not an issue. Luse v. Luse, 992 So. 2d 659 (Miss. Ct. App. 2008).

Chancery court did not err in granting a divorce without requiring Miss. Unif. Ch. Ct. R. 8.05 financial declarations where the wife failed to allege any concealment. In re Dissolution of the Marriage of De St. Germain, 977 So. 2d 412 (Miss. Ct. App. 2008).

Chancellor properly weighed each Armstrong factor in determining alimony award, discussing the parties' earning capacities, standards of living, and their respective tax obligations; the husband failed to provide a financial disclosure statement pursuant to Miss. Unif. Ch. Ct. R. 8.05; thus, the trial court's failure to order the wife's disclosure was of no consequence. Ghoston v. Ghoston, 979 So. 2d 719 (Miss. Ct. App. 2007).

Where chancellor made award of lump sum alimony and did not mention on record the lack of financial statements, it could be assumed that the requirement of such financial statements was properly excused. Bland v. Bland, 629 So. 2d 582 (Miss. 1993).

Submission of false statement.

There was no evidence a husband intentionally filed a substantially false financial statement because the husband acknowledged his variation in income as well as his retirement account; the wife was aware of his employment and had the option of obtaining financial records to dispute his income and retirement. Holman v. Holman, 231 So. 3d 183 (Miss. Ct. App. 2017), writ of certiorari denied by 229 So. 3d 709, 2017 Miss. LEXIS 464 (Miss. Nov. 2, 2017).

Trial court did not err by failing to consider a husband's additional income because there was no evidence in the record that a husband falsely reported his income or had additional income; the wife merely asserted that the husband had additional income from his work as a photographer and that his reported income was incorrect. Bell v. Stevenson, 158 So. 3d 1229 (Miss. Ct. App. 2015).

Chancellor did not err in modifying a divorce decree on the basis that a wife committed fraud because its decision was based on clear and convincing evidence, and substantial credible evidence existed to support that the wife committed a fraud upon the chancery court by not revealing to it or to the husband the existence of the additional debt; as a result, the husband's monthly expenses substantially increased. Finch v. Finch, 137 So. 3d 227 (Miss. 2014).

Chancellor did not err in finding no fraud on the court because there was no evidence that a husband intentionally filed a substantially false financial statement where it was clear from the record that the chancellor was aware the husband had $1,000 in cash not listed in his financial statement and was aware of the husband's sources of income from his military pension and disability checks. King v. King, 130 So. 3d 166 (Miss. Ct. App. 2014).

Court was within its authority to modify a divorce judgment almost four years later when the wife presented evidence that the husband intentionally submitted a substantially false Miss. Unif. Ch. Ct. R. 8.05 financial disclosure statement; such intentional filing constituted a fraud, for which there was no limitation of time restricting a remedy under Miss. R. Civ. P. 60(b). Trim v. Trim, 33 So. 3d 471 (Miss. 2010).

Valuation.

Chancery court properly valued three marital assets during the equitable distribution of the marital estate because the record contained sufficient evidentiary support for the chancellor's valuation where, while the husband testified that the truck and two trailers at issue lacked monetary value, the chancellor found that he lacked credibility and that his testimony had been full of inaccurate and untruthful information intended to conceal his income and assets, and based on the evidence before him, the chancellor valued each of the disputed items among the amounts provided by the wife's statement and the husband's testimony and amended statement. Kimble v. Kimble, — So. 3d —, 2019 Miss. App. LEXIS 282 (Miss. Ct. App. June 18, 2019).

Chancery court did not err in awarding a wife the parties' trailer for their snowball business, which was damaged during a hurricane, because it based the value for the trailer from the wife's own Rule 8.05 statement Elkins v. Elkins, 238 So. 3d 1204 (Miss. Ct. App. 2018).

Chancery court should have accounted for the indebtedness on certain property, as listed in a husband's Miss. Unif. Ch. Ct. R. 8.05 statement, in its valuation of the marital assets assigned to the husband because the husband's statement shows no indebtedness on the property; the chancery court should have credited the husband with only the equity in those assets. Mauldin v. Mauldin, 107 So. 3d 176 (Miss. Ct. App. 2013).

Chancery court did not err in considering the value of marital property as listed on the Miss. Unif. Ch. Ct. R. 8.05 financial statements of a husband and wife without conducting an independent investigation because the chancery court adopted the values the husband and wife assigned to their assets in their financial statements. Mauldin v. Mauldin, 107 So. 3d 176 (Miss. Ct. App. 2013).

Rule 8.06. Change of address of children.

(a) In all domestic cases involving custody or visitation of minors and even though no order for custody or visitation may have been entered, each party shall keep the other informed of his/her full address, including state, city, street, house number, and telephone number, if available, unless excused in writing by the Court.

(b) Within five days of a party subject to this rule changing his/her address, he/she shall, so long as the child or children remain minors, notify in writing the Clerk of the Court which has entered the order providing for custody and visitation, of his/her full new address and shall furnish the other party a copy of such notice. The notice shall include the Court file number. The Clerk shall docket and file such notice in the cause.

(c) In the event of a threat, disaster, or other emergency, such as a hurricane, which causes an emergency evacuation, any party who has custody of a minor child (physical custody or while exercising visitation) has a duty to notify the other parent of the location and well being of the minor(s) as soon as reasonably possible.

(d) Every order respecting custody or visitation should contain a provision incorporating the terms and requirements of sub-paragraphs (a), (b) and (c) above.

(e) The purpose of this rule is to prevent a parent from concealing from others the address and whereabouts of children. Willful failure to comply with this rule may be treated as a contempt. Failure to file with the Clerk the notice required by this rule shall create a rebuttable presumption that written notice was not given to the other party. (Adopted effective February 18, 1991; amended effective July 17, 2008 to provide notification of parent in case of emergency evacuation.)

JUDICIAL DECISIONS

Contempt.

Chancery court did not err in failing to find a mother in contempt for violating the rule because it found that although the mother did not notify the father of a change in address, her actions did not rise to the level of contumacious contempt since she was unaware of the requirement and was not represented by a lawyer at the time; the mother was only in Georgia for a couple of weeks before she moved back to Mississippi. Taylor v. Timmons (In re C.T.), 228 So. 3d 311 (Miss. Ct. App. 2017).

9.00 RULES CONCERNING DUTIES OF THE CLERK

Rule 9.01. Costs of court.

Court cost deposits to pay the fees due the Chancery Clerk shall be made with the filing of any complaint or petition as follows:

(1) No fault divorce: a deposit of $30.00.

(2) Complaints other than ex parte matters: a deposit of $75.00.

(3) All ex parte matters: a deposit of $25.00.

(4) Upon filing a counterclaim or crossclaim by a Cross-Plaintiff: a deposit of $25.00.

(5) The Clerk may, pursuant to M.R.C.P. 3(b), require an additional deposit.

(Amended effective June 24, 1992.)

ATTORNEY GENERAL OPINIONS

Section 25-7-9 must be read along with Uniform Chancery Court Rule 9.01. Reeves, Apr. 21, 2006, A.G. Op. 06-0129.

Where the plaintiff files a complaint against the defendant, and the defendant files an answer containing one or more counterclaims, there is no basis to charge the $25.00 fee. But when one of the defendants of the original cause of action files a complaint against another of the original defendants, then the clerk may charge the original defendant filing this new complaint with a co-defendant in the original cause of action the $25.00 fee. Likewise, where one of the plaintiffs in the original cause of action files a complaint against another of the original plaintiffs, then the Clerk may charge the original plaintiffs filing this new complaint against a co-plaintiff in the original cause of action the $25.00 fee. Reeves, Apr. 21, 2006, A.G. Op. 06-0129.

Rule 9.02. All papers must be kept in proper files.

The Clerk shall place and keep all papers pertaining to each action in a separate file and all papers pertaining to the same case shall be kept in the same file. The Clerk shall place and keep the files containing the papers in a filing case in the Clerk's office, or vault, in numerical order. In addition, files may be maintained electronically or on microfilm or microfiche provided a "reader" is available in the Clerk's office.

JUDICIAL DECISIONS

Papers pertaining to same case.

With respect to a separate maintenance suit and a subsequently filed divorce action, although the filing of the pleadings in two different cause numbers did not result in a reversible injustice, the papers ought to have been kept in the same file because the two cases originated from the same set off acts and involved the same parties. Hampton v. Hampton, 977 So. 2d 1181 (Miss. Ct. App. 2007), writ of certiorari denied en banc by 977 So. 2d 1144, 2008 Miss. LEXIS 129 (Miss. 2008).

Rule 9.03. [Deleted].

Rule 9.04. Original wills and bonds how kept.

The Clerk shall keep all original Wills, all bonds and receipts from banks and all disputed documents filed with him safely and securely locked in a safe or vault in his office. He shall not permit the same to be taken from his custody for any purpose, except on an order of the Chancellor entered on the minutes.

Rule 9.05. [Deleted].

10.00 ABORTION

Rule 10.01. Waiver of consent to abortion.

Any request by a minor to the Chancery Court or the Chancellor in vacation for waiver of consent to an abortion shall be by petition, filed with the Clerk of said Court by the minor or by a next friend. The petition shall be made under oath and shall include all of the following:

(1) A statement that the complainant is pregnant;

(2) A statement that the complainant is unmarried, under eighteen years of age, and unemancipated;

(3) A statement that the complainant wishes to have an abortion without the notification of her parents or legal guardian;

(4) An allegation of one or more of the following:

(a) That the complainant is sufficiently mature and well informed to intelligently decide whether to have an abortion without the notification of her parents or legal guardian;

(b) That one or both of her parents or her legal guardian was engaged in a pattern of physical, sexual, or emotional abuse against her, or that the notification of her parents or legal guardian otherwise is not in her best interest;

(c) That performance of the abortion would be in the best interest of the minor.

(5) A statement as to whether the complainant has retained an attorney, the name, address, and telephone number of her attorney. A minor may represent herself or be represented by counsel. The Court shall advise each minor petitioner of her right to court-appointed counsel, and shall appoint counsel to represent her if the minor so requests, and if the minor appears not to be represented.

If the minor chooses to represent herself such pleadings, documents, or evidence which she may file with the Clerk shall be liberally construed by the Court so as to do substantial justice. No fee shall be required by the Clerk for filing any papers or pleadings.

Upon the filing of any petition under this section, the Clerk shall immediately notify the Court or the Chancellor in vacation that such petition has been filed. The Court, or the Chancellor in vacation shall immediately exercise all due diligence in granting a setting within the time required by law. If a Chancellor in the District is not available, the Clerk shall immediately refer the petition to another Chancellor, Circuit Judge, County Judge, or a special master in Chancery to hear the petition as provided by law.

If the Court cannot hear the matter or the Court fails to make findings of fact and conclusions of law within 72 hours of the time of the filing of the petition, the Clerk shall immediately issue or cause to issue a statement under seal of the Court, that the Court has not ruled within 72 hours of the time of the filing of the petition and that the minor may proceed as if the consent requirement of Miss. Code Ann. 41-41-53 has been waived.

All proceedings, files, documents, and records reasonably connected with proceedings herein shall be kept strictly confidential and anonymous. Reference to said minor's identity shall be made by use of her initials only. Docket entries and decrees or orders spread upon the minutes of the Court shall in no way refer to the name of the minor, but shall be by reference to initials only.

The Court or the Chancellor in vacation shall conduct closed hearings regarding any such petition filed, and the Clerk, Reporter, and other officers of the Court shall take such steps as are reasonably necessary to maintain the confidentiality and anonymity of both litigants and documents.

If the Court or Chancellor in vacation shall rule against the petition or petitioner, or not grant a waiver of necessity for parental consent, a confidential, expedited appeal may be had by the minor pursuant to Mississippi Rule of Appellate Procedure 48.

If no appeal is taken during the appropriate period, but in no event later than seven (7) days following the filing of the disposition of said petition, all records except the Court's docket shall be securely sealed and deposited under lock and key in the Clerk's office and shall remain sealed and not available for inspection without further order of the Court. (Adopted effective February 18, 1991; amended March 22, 2001.)

11.00 CONFLICTING RULES

Rule 11.01. Priority.

If there be any conflict between these Rules and Mississippi Rules of Civil Procedure, Rules of Evidence, Mississippi Constitution and any applicable Mississippi statutes, the latter shall be followed. (Former Rules 10.00 and 10.01 renumbered 11.00 and 11.01, respectively, effective February 18, 1991.)

ADMINISTRATIVE ORDER IN REGARD TO THE USE OF COURT MEDIATORS IN DOMESTIC RELATIONS ACTIONS

As Amended February 17, 1987

WHEREAS the voluntary use of court-appointed mediators to help parties to civil litigation in the District and Superior Courts of the State of Maine to settle their disputes has proven useful to both the parties and the courts and is now mandatory; and

WHEREAS mediation has helped to settle many disputes in Mississippi Courts since it was authorized by administrative Order on December 1, 1986; and

WHEREAS mediation has often proved to be particularly valuable in helping parties to resolve through their own efforts many issues of custody, visitation, support, disposition of property, alimony, and the like that arise in divorce and other domestic relations actions; and

WHEREAS some Chancery Courts in Mississippi may desire mediation services to resolve cases without trial and the parties to domestic relations actions may be encouraged or required to use mediation to attempt to resolve their controversies; and

WHEREAS it appears appropriate to obtain the results of experimentation with the use of mediation in domestic relations actions; and

WHEREAS for the purpose of this Administrative Order, the term "domestic relations actions" shall include, without limitations, any actions for divorce, judicial separation, disposition of marital property or child custody proceedings.

NOW THEREFORE, it is ordered that:

1. In any domestic relations action, a court mediator may be made available by the Court, upon the joint request of the parties or their attorneys made to the clerk or the court administrator. The Court may also require mediation in any domestic relation action.

2. In any domestic relations action in those Chancery Districts that may use mediators, counsel is expected to inform his client and opposing counsel on the advisability of using the services of a court mediator on all or certain issues. If mediation is requested by the parties, counsel shall notify the clerk of court administrator. If the Court requires mediation the parties or their attorney shall be notified by the clerk or the court administrator.

3. In any domestic relations action, those courts using mediators may, before conducting a contested hearing, determine what efforts the parties have made to settle their controversy, and may, as the Court deems appropriate, require that the parties meet with a court mediator to attempt to resolve all or certain of the disputed issues.

4. Every settlement reached through mediation shall be submitted to the court for approval within five days of the mediation, and, if approved, shall be reflected in the judgment of the Court.

5. This administrative order applies to any domestic relations action that is pending on this date, as well as to any hereafter commenced.

6. The mediators shall be selected by the trial Judge, who may assess each party a reasonable sum, as cost, to cover the services of the mediator.

7. A copy of this amended administrative order shall be displayed on the public bulletin board at each clerk's office in those Courts using mediators.

SO ORDERED this the 17th day of February 1987.

Harry G. Walker
Chief Justice

ADMINISTRATIVE ORDER IN REGARD TO STANDARDIZED FINANCIAL STATEMENTS IN DOMESTIC RELATIONS ACTIONS

As Amended June 12, 1996

IN RE: UNIFORM CHANCERY COURT RULES - RULE 8.05

ORDER

This matter came before the Court, sitting en banc, on the petition of the Chancery Conference, filed March 11, 1996, seeking amendment of Rule 8.05 of the Uniform Chancery Court Rules which would provide a standardized financial statement for use in domestic matters. The Court having examined the petition finds that the proposal will contribute to the fair and efficient administration of justice and that it should be granted.

IT IS, THEREFORE, ORDERED that the petition of the Chancery Conference, filed March 11, 1996, seeking amendment of Rule 8.05 of the Uniform Chancery Court Rules be and the same is hereby granted, and that effective July 1, 1996 the Uniform Chancery Court Rules shall stand amended, Rule 8.05 to read as set forth in Exhibit "I" hereto, and Exhibits "A," "B," and "C" to Exhibit "I" shall be appended as exhibits to the Uniform Chancery Court Rules.

IT IS FURTHER ORDERED that a certified copy of this order shall be forwarded by the Clerk of this Court to West Publishing Company for publication as promptly as reasonably possible in the advance sheets of the Southern Reporter, Second Series, the official reporter of cases decided in this Court, and in the *Mississippi Rules of Court*.

SO ORDERED, this, the 12th day of April, 1997.

/s/Lenore L. Prather
LENORE L. PRATHER
PRESIDING JUSTICE, FOR THE COURT

EXHIBIT "A"

IN THE CHANCERY COURT OF ____________________ COUNTY
STATE OF MISSISSIPPI

____
PLAINTIFF

VS. ______________________________
CIVIL ACTION NUMBER

____
DEFENDANT

****

I. GENERAL INFORMATION

NAME: ____

ADDRESS: ____

CITY, STATE AND ZIP CODE: ______________________________

DATE OF BIRTH: ______________________________________

SOCIAL SECURITY NUMBER: ______________________________

OCCUPATION: ____

EMPLOYER: ____

EMPLOYER'S ADDRESS: _________________________________

____

	NAME	DATE OF BIRTH
MINOR CHILDREN:	______________________	____________
	______________________	____________
	______________________	____________
	______________________	____________

II. INCOME STATEMENT

GROSS MONTHLY INCOME

1. Salary and Wages, including commissions bonuses, allowance and overtime 1. ________________

NOTE: To arrive at a monthly income figure, if paid weekly, multiply weekly income by 4.3; if paid bi-weekly, multiply bi-weekly income by 2.16

2. Pensions and retirement 2. ________________
3. Social Security 3. ________________
4. Disability and unemployment insurance 4. ________________
5. Public assistance (welfare, AFDC payments, etc.) 5. ________________
6. Dividends and interest 6. ________________
7. Rental Income 7. ________________
8. Other income________________________ 8. ________________
9. Other income________________________ 9. ________________
10. TOTAL MONTHLY INCOME 10. ________________

ITEMIZED MONTHLY DEDUCTIONS:

1. State Income Taxes 1. ________________

2. Federal Income Taxes 2. ____________
3. Social Security 3. ____________
4. Mandatory Insurance 4. ____________
5. Mandatory Retirement 5. ____________
6. Union or other dues 6. ____________
7. Other: (Specify) ____________ 7. ____________
8. Other: (Specify) ____________ 8. ____________
9. TOTAL MONTHLY DEDUCTIONS 9. ____________
10. NUMBER OF EXEMPTIONS: ____________
11. NET MONTHLY PAY 11. ____________

III. EXPENSE STATEMENT

A. LIVING EXPENSES	AS OF____________		AS OF____________	
	Self	Children	Self	Children
1. Rent/Mortgage (Residence)				
2. Real Property Taxes				
3. Real Property Insurance				
4. Maintenance (Residence)				
5. Food/Household Supplies				
6. Water, Sewer, etc.				
7. Electricity				
8. Gas (Residence)				
9. Telephone				
10. Laundry & Cleaning				
11. Clothing				
12. Insurance (Not payroll deducted)				
13. Medical				
14. Dental				
15. Child Care				
16. Children's Allowance				

17. Payment of child support/alimony (Prior Marriage)				
18. School Expenses				
19. Entertainment				
20. Incidentals & Miscellaneous				
21. Transportation other than vehicle				
22. Gasoline & Oil (auto)				
23. Repair (auto)				
24. Insurance (auto)				
25. Auto payments				
26. Church donations				

III. EXPENSE STATEMENT

	Self	Children	Self	Children
27. Charitable donations				
28. Newspaper/Magazines				
29. Cable TV				
30. Pet Expenses				
31. Yard Expenses				
32. Maid				
33. Retirement (IRA, etc.)				
34. Pest Control				
B. TOTAL LIVING EXPENSES				
35. Installment Payments Notes, loans, charge accounts, etc.				
36.				
37.				
38.				
39. OTHER EXPENSES				
40.				
41.				
TOTAL INSTALLMENT PAYMENTS:				
COMBINED TOTAL EXPENSES:				

IV. STATEMENT OF ASSETS

A. Real Estate

1. Title in the name of : ______________________________
   Address: ______________________________
   Who paid cost: ______________________________
   How cost paid: ______________________________

   Value (estimate) ______________________________
   Mortgage Balance ______________________________
   Equity ______________________________

2. Title in the name of : ______________________________
   Address: ______________________________
   Who paid cost: ______________________________
   How cost paid: ______________________________

   Value (estimate) ______________________________
   Mortgage Balance ______________________________
   Equity ______________________________

Note: List mortgage balance also under liabilities on the next page. List the amount of your monthly payment *only* under "V. LIABILITIES."

B. Motor Vehicles

1. Registered in the name of: ______________________________
   Year:__________ Model:__________ Mileage:__________
   How cost paid:______________ How cost paid:______________

   VALUE
   - Loan Balance ______________________________
   =Equity ______________________________

2. Registered in the name of: ______________________________
   Year:__________ Model:__________ Mileage:__________

How cost paid:__________________ How cost paid:__________________

VALUE

- Loan Balance ____

=Equity ____

IV. STATEMENT OF ASSETS (Continued)

3. Registered in the name of: ______________________

Year:__________ Model:__________ Mileage:__________

How cost paid:______________ How cost paid:______________

VALUE

- Loan Balance ______________________

=Equity ______________________

C. Other Personal Property (such as home computers, guns, lawnmowers, TVs, jewelry, household furnishings, etc.)

	VALUES
TOTAL	

D. Checking/Savings (name of Bank, Account Number and Amount in Account, including CDs, money markets, passbook accounts, etc.

Name(s) on Account	Bank/Account Number	Type Account	Balance
TOTAL VALUE			

E. Other Investments (IRAs, stock(s), mutual funds, pension plans, etc.)

Bank/Account Number	Type Investment	Balance

F. Life Insurance (exclude children)

Insured	Company	Face Amount	Cash	Beneficiary

TOTAL CASH VALUE (less loans) ________

G. All Other Assets

____________________ ____________________

____________________ ____________________

____________________ ____________________

TOTAL VALUE ________________

TOTAL OF ALL ASSETS $____________________

V. STATEMENT OF LIABILITIES

(Include mortgage, car loan, credit cards, personal loans)

Note: Also include under items 35-44 on Exhibit "A"

	A. Creditor	Party Responsible for Payment	Current Balance	Monthly Payment	Who Makes Payments
1.					
2.					
3.					
4.					
5.					
6.					

B. TOTAL LIABILITIES ________________

ACKNOWLEDGMENT OF TRUTHFULNESS

I declare to the Court that the foregoing Exhibit "A," including attachments, is true and correct and that this declaration was executed on the ______ day of ____________, 20____,

____
Party's Signature

IN THE CHANCERY COURT OF ________________ COUNTY
STATE OF MISSISSIPPI

____
PLAINTIFF

____
CIVIL ACTION NUMBER

____
DEFENDANT

CERTIFICATE OF COMPLIANCE

I, _____(name of party or attorney)_____, do hereby certify that I have this date complied with Rule 8.05 of the Uniform Chancery Court Rules and that I have mailed and/or delivered a copy of a detailed written statement of actual income and expenses and assets and liabilities to the attorney for the opposing party or the opposing party.

SO CERTIFIED on this the _____ day of ________________, 20____.

____
Attorney for Opposing Party

EXHIBIT "B"

IN THE CHANCERY COURT
OF ____________________ COUNTY, MISSISSIPPI
________________ JUDICIAL DISTRICT

________________________________ PLAINTIFF

VS CAUSE NO. ________________

________________________________ DEFENDANT

RULE 8.05 FINANCIAL STATEMENT

I, *(full legal name)* __________________________________,certify that the following information is true:

SECTION I. GENERAL INFORMATION

1. Date of Birth: ______________________

2 Physical Address:

____

3. Mailing Address:

____

4. A. Minor Children (below the age of 21) or a full-time student above the age of 21:

Name	Date of Birth	Child Support Order in effect? (Yes or No)	Amount of Monthly Child Support Order Payment

B. Adult Children being supported by you

Name	Date of Birth	Child Support Order in effect? (Yes or No)	Amount of Monthly Child Support Order Payment

5. Are you subject to and/or a party in any litigation or other court proceedings? (Bankruptcy, Class Action, Worker's Compensation, Personal Injury, etc.) If yes, please provide the style of the action including cause number and a brief description of the nature thereof. ______________________________
____

SECTION II. INCOME

1. My occupation is:______________________________

2: I am currently: [✓ all that apply]

____ a. **Unemployed**

1. Describe your efforts to find employment, how soon you expect to be employed, and the pay you expect to receive:______________________________
____
____
____
____

2. Provide a statement of your employment history and earnings from the inception of the marriage, or from the date of divorce, (whichever is applicable) on a separate sheet paper and attach it to this form.

Label the attachment "Employment History".

____ b. **Employed by:**______________________________

1. Address:______________________________

2. City, State, Zip Code:______________________________

3. Telephone Number:______________________________

4. My position is:______________________________

5. Pay rate: $__________ ( ) every week ( ) every other week ( ) twice a month ( ) monthly

____ Check here if you currently have more than one job. List the information above for the second job(s) on a separate sheet and attach it to this statement.

____ Check here if you are self-employed, own an interest in a business or farm, receive income from rental property, or if you report income or expenses on Schedule C, Schedule E, or Schedule F of your tax return.

Complete Exhibit 1 attached hereto.

____ Check here if you are expecting to become unemployed or change jobs soon, describe the change you expect and why and how it will affect your income:

____

____

____

____ c.**Retired.** Date of retirement: ______________________________

1. Employer from whom retired: ______________________________

2. Address: ______________________________

3. City, State, Zip Code: ____________________ Telephone Number: __________

4. Are you receiving retirement pay or benefits from this employer? _____ yes _____ no

_____ d. Is there any information which you think would be helpful for the Court to know about your employment? (If so, give comments here). ____________________
____
____
____

LAST YEAR'S GROSS INCOME FROM TAX RETURN:

	Your Income	Other Party's Income *(if known)*
Year ________	$____________	$________________

LAST YEAR'S ADJUSTED GROSS INCOME FROM TAX RETURN:

	Your Income	Other Party's Income *(if known)*
Year ________	$____________	$________________

LAST YEAR'S TAX REFUND FROM TAX RETURN:

	Federal Refund	State Refund
Year _________	$_____________	$________________

OUTSTANDING TAX LIABILITIES FROM TAX RETURN:

	Federal	State
Year _________	$______________	$________________

Does the IRS or the State of Mississippi currently have a tax lien on any items of property?_______

If yes, please state the total amount of the tax lien and the items encumbered.

____

____

PRESENT MONTHLY GROSS INCOME:

All amounts must be MONTHLY. Attach more paper, if needed. Items included under "other" should be listed separately with separate dollar amounts.

If you are paid on a schedule which is not monthly, you must convert those amounts. Conversion are as follows:
1. Paid Weekly, multiply by 4.33
2. Paid bi-weekly, multiply by 2.16
3. Paid on the 1st and 15th, or on 15th and 30th/31st, multiply by 2
4. Paid annually divide by 12

1. Monthly gross salary or wages 1.$__________

2. Bonuses, commissions, allowances, overtime, tips, and similar payments 2. __________

3. Average monthly business income for previous 6 months from sources such as self-employment, partnerships, close corporations, and/or independent contracts (Gross receipts minus ordinary and necessary expenses required to produce income.)
(● Attach sheet itemizing such income and expenses) 3.__________

4. Monthly disability benefits 4. __________

5. Monthly Workers' Compensation 5.__________

6. Monthly Unemployment Compensation 6.__________

7. Monthly pension, retirement, or annuity payments 7.__________

8. Monthly Social Security benefits 8.__________

9. Monthly alimony actually received
9a. From this case: $__________
9b. From other case(s) __________ Add 9a and 9b 9.__________

10. Monthly interest and dividends 10.__________

11. Monthly rental income (gross receipts minus ordinary and necessary expenses required to produce income)
(●Attach sheet itemizing each item and amount) 11.__________

12. Monthly income from royalties, trusts, and estates 12.__________

13. Monthly reimbursed expenses and in-kind payments to the extent that they reduce personal living expenses such as cars, travel, gas, phone, etc.
(●Attach sheet itemizing each item and amount) 13.____________

14. Monthly income from property such as CRP payments or subsidies 14.____________

15. Public Assistance (Welfare, AFDC Payments, CHIPS, Etc.) 15.____________

16. Severance Pay 16.____________

17. Monthly Investment Income 17.____________

18. Other:______________________________ 18.____________

19. Other:______________________________ 19.____________

20. Other:______________________________ 20.____________

21. **PRESENT MONTHLY GROSS INCOME** (Add lines 1-20) **TOTAL:** 21.____________

PRESENT MONTHLY DEDUCTIONS:

All amounts must be MONTHLY.

If you have deductions which are not deducted on a monthly basis, you must convert those amounts. Conversion are as follows:
1. Paid Weekly, multiply by 4.33
2. Paid bi-weekly, multiply by 2.16
3. Paid on the 1st and 15th, or on 15th and 30th/31st, multiply by 2

22. Present Monthly Federal Income Tax. 22.________________
    a. Anticipated Filing Status for the Present Year:____________
        (e.g. single, head of household, married filing separate, etc)
    b. Filing Status Last Year:______________________________
    c. Anticipated Number of Dependents claimed for Present Year:___
    d. Number of Dependents claimed Last Year: ____________
    e. Number of Exemptions claimed for the Present Year:__________
    f. Number of Exemptions claimed Last Year: ____________

23. Present Monthly State Income Tax 23.________________
    a. Anticipated Filing Status for the Present Year:_____________
        (e.g. single, head of household, married filing separate, etc.)
    b. Filing Status Last Year:______________________________
    c. Anticipated Number of Dependents claimed for Present Year:____
    d. Number of Dependents claimed Last Year: ____________
    e. Number of Exemptions claimed for the Present Year:__________
    f. Number of Exemptions claimed Last Year: ____________

24. Monthly FICA or self-employment taxes 24.________________

25. Monthly Medicare payment 25.________________

26. Monthly mandatory union dues 26.________________

27. Monthly mandatory retirement payments 27.________________

28. Monthly court-ordered child support actually paid for children from another relationship 28.________________

29. Monthly court-ordered alimony actually paid
    28a. From this case: $________________
    28b. From other case(s): ________________ Add 28a and 28b 29.________________

30. Other Mandatory Monthly Deductions. 30.________________

31. **TOTAL MONTHLY DEDUCTIONS:** (Add lines 22 through 29) 31.________________

32. **PRESENT NET MONTHLY INCOME** (Total Gross Income minus Total Monthly Deductions) 32.________________

SECTION III. MONTHLY EXPENSES

All amounts must be MONTHLY.

For any expenses which are not paid monthly, you must convert those amounts. Conversion are as follows:
1. Paid Weekly, multiply by 4.33
2. Paid bi-weekly, multiply by 2.16
3. Paid on the 1st and 15th, or on 15th and 30th/31st, multiply by 2
4. Paid annually divide by 12

A.	**HOUSEHOLD:**	**PRE-SEPARATION**	**CURRENT:**	**PROPOSED/ ESTIMATE EXPENSES:**
1.	Monthly mortgage or rent payments	1. ____________	1. ____________	1. ____________
2.	Monthly property taxes (if not included in mortgage)	2. ____________	2. ____________	2. ____________
3.	Monthly insurance on residence (if not included in mortgage)	3. ____________	3. ____________	3. ____________
4.	Monthly homeowners' association fees	4. ____________	4. ____________	4. ____________
5	Monthly electricity	5. ____________	5. ____________	5. ____________
6.	Monthly water, garbage, and sewer	6.____________	6. ____________	6. ____________
7.	Monthly telephone a. Land line b. Cell phone	7. ____________	7. ____________	7. ____________
8.	Monthly residence gas	8. ____________	8. ____________	8. ____________
9.	Monthly repairs and maintenance	9. ____________	9. ____________	9. ____________
10.	Monthly lawn care	10. ____________	10. ____________	10. ____________

11.	Monthly pest control	11. ____________	11. ____________	11. ____________
12.	Monthly misc. household supplies	12. ____________	12. ____________	12. ____________
13.	Monthly food	13. ____________	13. ____________	13. ____________
14.	Monthly meals outside home	14. ____________	14. ____________	14. ____________
15.	Monthly cable t.v.	15. ____________	15. ____________	15. ____________
16.	Monthly internet service	16. ____________	16. ____________	16. ____________
17.	Monthly alarm service contract	17. ____________	17. ____________	17. ____________
18.	Monthly service contracts on appliances	18. ____________	18. ____________	18. ____________
19.	Monthly maid service	19. ____________	19. ____________	19. ____________
20.	Monthly dry cleaning and laundry	20. ____________	20. ____________	20. ____________
21.	Monthly clothing	21. ____________	21. ____________	21. ____________
22.	Monthly medical, dental, and prescription (only those not covered by insurance or otherwise reimbursed)	22. ____________	22. ____________	22. ____________
23.	Monthly psychiatric, psychological, or counselor (only those not covered by insurance or otherwise reimbursed)	23. ____________	23. ____________	23. ____________
24.	Monthly nonprescription medications, cosmetics, toiletries, and sundries	24. ____________	24. ____________	24. ____________
25.	Monthly grooming	25. ____________	25. ____________	25. ____________
26.	Monthly gifts	26. ____________	26. ____________	26. ____________
27.	Monthly pet expenses	27. ____________	27. ____________	27. ____________
28.	Monthly club dues and membership	28. ____________	28. ____________	28. ____________
29.	Monthly sports and hobbies	29. ____________	29. ____________	29. ____________
30.	Monthly entertainment	30. ____________	30. ____________	30. ____________
31.	Monthly tolls and parking	31. ____________	31. ____________	31. ____________
32.	Monthly periodicals/newspapers/ magazines/books/tapes/CDs	32. ____________	32. ____________	32. ____________
33.	Monthly vacations	33. ____________	33. ____________	33. ____________
34.	Monthly education expenses	34. ____________	34. ____________	34. ____________
35.	**SUBTOTAL**	35. ____________	35. ____________	35. ____________

B. VEHICLES AND BOATS

36.	Monthly gasoline and oil	36. ____________	36. ____________	36. ____________

37.	Monthly repairs	37. ____	37. ____	37. ____
38.	Monthly tags	38. ____	38. ____	38. ____
39.	Monthly insurance for each vehicle	39. ____	39. ____	39. ____
	a. ____			
	b. ____			
	c. ____			
40.	Monthly payments (lease or financing)	40. ____	40. ____	40. ____
41.	Monthly alternative transportation (bus, rail, car pool, etc.)	41. ____	41. ____	41. ____
42.	Monthly tolls and parking	42. ____	42. ____	42. ____
43.	Other: ____	43. ____	43. ____	43. ____
44.	**SUBTOTAL**	44. ____	44. ____	44. ____

C. **MONTHLY EXPENSES FOR CHILDREN**

(In addition to the amount please indicate with "M" or "F" if the expense is normally paid by Mother or Father.)

45.	Monthly nursery, babysitting, or day care	45. ____________	45. ____________	45. ____________
46.	Monthly school tuition	46. ____________	46. ____________	46. ____________
47.	Monthly school supplies, books, fees and field trips	47. ____________	47. ____________	47. ____________
48.	Monthly after school activities (School sponsored: Math, Drama, etc.)	48. ____________	48. ____________	48. ____________
49.	Monthly lunch money	49. ____________	49. ____________	49. ____________
50.	Monthly private lessons or tutoring (music, dance, tennis, etc.)	50. ____________	50. ____________	50. ____________
51.	Monthly allowances (spending money, gas money, etc.)	51. ____________	51. ____________	51. ____________
52.	Monthly clothing and uniforms	52. ____________	52. ____________	52. ____________
53.	Monthly entertainment (movies, parties, etc.)	53. ____________	53. ____________	53. ____________
54.	Monthly medical dental, prescriptions (nonreimbursed only)	54. ____________	54. ____________	54. ____________
55.	Monthly psychiatric/psychological/counselor	55. ____________	55. ____________	55. ____________
56.	Monthly orthodontic	56. ____________	56. ____________	56. ____________
57.	Monthly beauty parlor/barber shop	57. ____________	57. ____________	57. ____________
58.	Monthly nonprescription medication	58. ____________	58. ____________	58. ____________
59.	Monthly cosmetics, toiletries, and sundries	59. ____________	59. ____________	59. ____________
60.	Monthly gifts from child(ren) to others (other children, relatives, teachers, etc.)	60. ____________	60. ____________	60. ____________
61.	Monthly cost of annual gifts to children (Christmas, Birthday, etc.)	61. ____________	61. ____________	61. ____________
62.	Monthly camp or summer activities	62. ____________	62. ____________	62. ____________
63.	Monthly clubs (4-H, Girl Scouts/Boy Scouts, etc.)	63. ____________	63. ____________	63. ____________
64.	Monthly travel expenses for visitation with minor children	64. ____________	64. ____________	64. ____________
65	Other:____________________	65. ____________	65. ____________	65. ____________
66.	Other:____________________	66. ____________	66. ____________	66. ____________

67.	**SUBTOTAL**	**67.** ______	**67.** ______	**67.** ______

D. **MONTHLY EXPENSES FOR CHILD(REN) FROM ANOTHER RELATIONSHIP**:

(other than court-ordered child support)

68.	______	68. ______	68. ______	68. ______
69.	______	69. ______	69. ______	69. ______
70.	______	70. ______	70. ______	70. ______
71.	**SUBTOTAL**	**71.** ______	**71.** ______	**71.** ______

E. **MONTHLY INSURANCE:**

72.	Health/ Medical Insurance a. Insured Premium $______ b. Insured plus spouse Premium $______ c. Family Premium $ ______	72. ______	72. ______	72. ______
73.	Monthly Life Insurance Premiums	73. ______	73. ______	73. ______
74.	Dental Insurance a. Insured Premium $______ b. Insured plus Spouse Premium $______ c. Family Premium $______	74. ______	74. ______	74. ______
75.	Disability Insurance Premiums	75. ______	75. ______	75. ______
76.	Optical Insurance Premiums	76. ______	76. ______	76. ______
77.	Other:______	77. ______	77. ______	77. ______
78.	**SUBTOTAL**	**78.** ______	**78.** ______	**78.** ______

F. **OTHER MONTHLY EXPENSES NOT LISTED ABOVE:**

79.	Other:______	79. ______	79. ______	79. ______
80.	Other:______	80. ______	80. ______	80. ______
81.	Other:______	81. ______	81. ______	81. ______
82.	Other:______	82. ______	82. ______	82. ______
83.	**SUBTOTAL**	**83.** ______	**83.** ______	**83.** ______

84.	**TOTAL MONTHLY EXPENSES:** (Add all expense Subtotals plus the monthly payments due on any liabilities that are listed in Section V., A. Liabilities, that you have not listed in 1-84)	**84.** ________	**84.** ________	**84 .** ________
	SUMMARY:			
85.	**TOTAL PRESENT MONTHLY NET INCOME** (from line 32 of SECTION I. INCOME)	**85. $**________	**85. $**________	**85. $**________
86.	**TOTAL MONTHLY EXPENSES** (from line 84 above)	**86. $**________	**86. $**________	**86. $**________
87.	**SURPLUS** (If line 85 is more than line 86, subtract line 86 from line 85. This is the amount of your surplus. Enter that amount here.)	**87. $**________	**87. $**________	**87. $**________
88.	**(DEFICIT)** (If line 86 is more than line 85, subtract line 85 from line 86. This is the amount of your deficit. Enter that amount here).	**88.($**________**)**	**88.($**________**)**	**88.($**________

SECTION IV. ASSETS

A. **REAL ESTATE** The value of the real estate may be an estimate or a recent appraisal. If values are acquired from an appraisal, attach to this 8.05 Financial Statement Affidavit a copy of the appraisal. Attach additional sheets if necessary.

1. Address/Description: ____________________________________

Primary Use (Example: primary residence, rental property, etc.): ______________

Date Acquired: ____________________________________

Original Cost: $____________________________________

County Assessed Value (County Tax Appraisal): $______________________

Current Fair Market Value: **$**______________

Appraisal _____ yes _____ no

Appraisal Attached? _____ yes _____ no

Estimate: _____ yes _____ no

Mortgage Balance: $____________________

Equity (Fair Market Value minus Mortgage Balance) $____________________

Titled in the Name of: ____

Comments: ____

____

2. Address/Description: ____

Primary Use (Example: primary residence, rental property, etc.): ____________________

Date Acquired: ____

Original Cost:$____

County Assessed Value (County Tax Appraisal) $____________________________

Current Fair Market Value: $____________________

Appraisal _____ yes _____ no

Appraisal Attached? _____ yes _____ no

Estimate: _____ yes _____ no

Mortgage Balance: $____________________

Equity (Fair Market Value minus Mortgage Balance) $____________________

Titled in the Name of: ____

Comments: ____

____

3. Address/Description: ____

Primary Use (Example: primary residence, rental property, etc.): ____________________

Date Acquired:____

Original Cost: $____

County Assessed Value (County Tax Appraisal) $____________________________

Current Fair Market Value: $____________________

Appraisal _____ yes _____ no

Appraisal Attached? _____ yes _____ no

Estimate: _____ yes _____ no

Mortgage Balance: $____________________

Equity (Fair Market Value minus Mortgage Balance) $____________________

Titled in the Name of: ____

Comments: ____

____

____

TOTAL EQUITY:____________________

B. MODULAR/ MOBILE HOMES.

1. Where is the Modular/ Mobile Home located? ______________________

Primary Use (Example: primary residence, rental property, etc.): ______________

Registered in the name of: ______________________

Year: Model: ______________________

Value: $______________________

Loan Balance: $______________________

Equity: $______________________

Comments: ____

____

C. MOTOR VEHICLES (Cars, Trucks, RV's, Boats, Tractors, 4-Wheelers, Motorcycles, etc.)

The appropriate value for motor vehicles is the NADA value or a value from a similar source such as Kelly's Blue Book (www.kbb.com) or Edmond's Blue Book (www.edmonds.com). If values are acquired from these or similar sources, attach to this 8.05 Financial Statement Affidavit a copy of the printout of the assessment. Attach additional sheets if necessary.

1. Registered in the name of: ______________________

Year: Model: Mileage: ______________

How Cost Paid: ______________________

Value: $______________________

Loan Balance: $______________________

Equity: $______________________

Printout Attached? ______ Yes ______ No

2. Registered in the name of: ______________________

Year: Model: Mileage: ______________

How Cost Paid: ______________________

Value: $______________________

Loan Balance: $______________________

Equity: $______________________

Printout Attached? ______ Yes ______ No

3. Registered in the name of: ______________________

Year: Model: Mileage: ______________

How Cost Paid: ______________________

Value: $______________________

Loan Balance: $__________________________

Equity: $__________________________

Printout Attached? ______ Yes ______ No

4. Registered in the name of: ______________________________

Year: Model: Mileage: ________________________

How Cost Paid: ____________________________________

Value: $__________________________

Loan Balance: $__________________________

Equity: $__________________________

Printout Attached? ______ Yes ______ No

TOTAL EQUITY: ____________________

D. **OTHER PERSONAL PROPERTY** The value of personal property should be the fair market value. Fair market value is the price at which the item could be sold to a willing buyer, under no compulsion to buy. When valuing an item consider the present condition (wear and tear, etc.) Examples of fair market value may be obtained from flea markets, garage sales, pawn shops, etc. **Fair market value is not the replacement value or purchase price.** Attach additional sheets if necessary.

ITEM	VALUE
Furniture and Household Furnishings	
Tools	
Collectibles (art, coins, dolls, cars, etc.)	
Crystal, Silver, China, Gold	
Jewelry	
Sporting Equipment (guns, skis, golf clubs, etc.)	
Entertainment Equipment (televisions, stereo, pool table, etc.)	
Electronics (computers, digital cameras, printers, etc.)	
Lawn equipment	
Musical Instruments	
Other:	
Other:	

TOTAL VALUE	$ ______

E. **FINANCIAL ACCOUNTS:** List all checking accounts, savings accounts, money market accounts, passbook accounts, credit union accounts, etc. in which you have an interest.

NAME(S) ON ACCOUNT	FINANCIAL INSTITUTION OR BANK NAME	TYPE OF ACCOUNT	LAST FOUR(4) DIGITS ON THE ACCOUNT	BALANCE 90 DAYS PRIOR TO DATE OF COMPLAINT FILED	CURRENT BALANCE AS OF __/__/__
TOTAL CHECKING/ SAVINGS					$_____

F. **OTHER INVESTMENTS** List all IRAs, stocks, CD's, mutual funds, pension plans, bonds, 401(k), PERS, Deferred Compensation, etc.

NAME(S) ON INVESTMENT	NAME OF FINANCIAL INSTITUTION, BROKERAGE FIRM, ETC.	TYPE OF INVESTMENT	LAST FOUR (4) DIGITS ON THE ACCOUNT	BALANCE 90 DAYS PRIOR TO DATE OF COMPLAINT FILED	CURRENT BALANCE AS OF __/__/__

TOTAL OTHER INVESTMENTS	$_______

G. CASH/CASH EQUIVALENTS AND OTHER ITEMS OF VALUE

	AMOUNT
Money in your possession (on hand)	
Money in banks, deposit boxes, etc. not listed above	
Money in personal or business safes, lock boxes, etc.	
Money being held for you by a third person or entity	
Other Cash:	
Other Cash:	
TOTAL CASH	$__________

H. LIFE INSURANCE

PERSON INSURED	OWNER OF POLICY	COMPANY	COVERAGE AMOUNT	LOANS	CASH VALUE	LAST FOUR (4) DIGITS OF POLICY	BENEFICIARY
	TOTAL CASH VALUE				$		

I. FUTURE ASSETS If you have the right to receive assets or income in the future, such as accrued vacation, sick leave, bonus, income from a trust(s), etc. you must list them here.

FUTURE ASSETS	Possible Value
TOTAL FUTURE ASSETS	$____________

J. **ALL OTHER ASSETS (You are required to list all assets of value in which you have an interest, that you have not listed elsewhere on this form)**

DESCRIPTION OF ASSET	VALUE
Notes (Money owed to you in writing)	
Loans (Money owed to you not evidenced by a writing)	
Business Interest	
Patents, Copyrights, etc.	
Oil and Gas Interests	
Country Club and other Membership Interests (Hunting Clubs, etc.)	
Timber Rights	
Gold, Precious Metals	
Other:	
Other:	
TOTAL OTHER ASSETS	$ ________

SUMMARY

TOTAL ASSETS: $______________________
(ADD Total from previous Sections A through J).

SECTION V. LIABILITIES

A. LIABILITIES List all creditors including creditors of your spouse. Include all mortgage(s), car loans, credit cards, personal loans, medical providers, credit union loans, judgments, charge accounts, etc.

	CREDITOR	LAST FOUR (4) DIGITS OF ACCOUNT	PURPOSE/ REASON FOR DEBT	WHOSE NAME IS LISTED ON THE DEBT	CURRENT BALANCE DUE	MONTHLY PAYMENT DUE	WHO PAYS
1							
2							
3							
4							
5							
6							
7							
8							
9							
	TOTAL LIABILITIES				$ ______	$ ______	

B. CONTINGENT LIABILITIES If you have any future liabilities such as tax payments, judgments, pending lawsuits, etc. you must list them here.

DESCRIPTION OF CONTINGENT LIABILITIES	Contingent Amount Owed

DESCRIPTION OF CONTINGENT LIABILITIES	Contingent Amount Owed
TOTAL CONTINGENT LIABILITIES	$ ________

SUMMARY

TOTAL LIABILITIES: $________________________

(ADD Total from previous Sections A through B).

SECTION VI. SEPARATE PROPERTY and SEPARATE LIABILITIES

Please list any assets including real estate, modular/mobile homes, motor vehicles, personal property, financial accounts, other investments, cash/cash equivalents and other items of value, life insurance, future assets and all other assets which you believe are separate property and should not be divided or equitably distributed in a divorce proceeding and explain your reasons in the comments section.

Separate Asset	Comments:

Please list any liabilities including credit cards, judgments, tax liabilities, etc which you believe should not be divided or equitably distributed in a divorce proceeding and explain your reasons in the comments section.

Separate Liability	Comments:

ACKNOWLEDGMENT OF TRUTHFULNESS

I declare to the Court that the foregoing Exhibit "B" including attachments, is true and correct and that this declaration was executed on the ______ day of ____________, 20___,

____
Party's Signature

CERTIFICATE OF COMPLIANCE

I, ___________________, do hereby certify that I have this date complied with Rule 8.05 of the Uniform Chancery Court Rules, and that I have mailed and/or delivered a copy of a detailed written statement of actual income and expenses and assets and liabilities to the attorney for the opposing party or the opposing party.

SO CERTIFIED, this ______ day of _______________, 20___.

____

Exhibit 1

If you are self-employed, own an interest in a business or farm, receive income from rental property, or report income or expenses on Schedule C, Schedule E, or Schedule F of your tax return, please complete the following. Use additional pages if necessary.

1. Please describe the business activity:____________________________________

2. Do you actively work in the business? YES or NO (circle appropriate response).

If yes, please indicate the average number of hours worked per week:_____hours.

3. Does the business provide a vehicle for your personal use? YES or NO (circle appropriate response). If yes, please provide a description of the vehicle: ______

____

4. Does the business provide a vehicle for the use of any members of your immediate family? YES or NO (circle appropriate response). If yes, please provide a description of each vehicle and indicate the family member that drives the vehicle:____

5. Do any members of your immediate family work in the business? YES or NO (circle appropriate response).

If yes, please list each family member, the duties of their position, number of hours worked per week, and the rate of pay.

Name	Duties/ Job Description	Hours Worked Per Week	Pay Per Week

6. Does the business pay any expenses on your behalf or on behalf of your immediate family? YES or NO (circle the appropriate response). If yes, please describe each expense and provide the cost of the expense.

(Examples: Credit Cards, Utilities, Auto Repairs, Fuel, Insurance, Cell Phone, School Tuition, Oil Changes, Medical Expenses, Pet Expenses, Meals, etc.)

Description of the Expense	Amount of Expense Paid by the Business

7. Does the business provide you with anything of value or a tax benefit or any "perks"? YES or NO (circle appropriate response). If yes, please describe each item of value, each tax benefit and every "perk" and provide the cost or monetary value of the same. (Examples: Hunting Leases, Country Club (dues, stock or expenses), Sporting Event Tickets, Vacations, etc.)

Description of item of value, tax benefit or "perk"	Cost or Monetary Value

8. Does the business own any assets that are not necessary for its operation?

YES or NO (circle appropriate response)

If yes, please describe the asset.

(Example: Land or Art held for investment, boats, condominiums, vehicles, etc.)

____

____

____

8.05 FINANCIAL DECLARATION DOCUMENT PRODUCTION REQUEST

You, ______________________(name of party) must produce to ________________________ (name of opposing party or his/her attorney) within 30 days, the documents checked below if you have them in your possession or control, or if you can secure copies upon reasonable request.

_____ 1. Copies of your past three (3) year's Federal and State Income Tax returns, in full form as filed.

_____ 2. A copy of your most recent Social Security Earnings Statement or a completed Form SSA-7050-F4.

_____ 3. Your most recent pay check stub.

_____ 4. Your most recent W-2's.

_____ 5. All 1099's received by you in the past year.

_____ 6. All K-1's received by you in the past year.

_____ 7. Copies of the past three (3) year's Federal and State Tax Income Tax returns, in full form as filed, for any partnership, limited liability company, corporation or limited partnership in which you own or have an interest

_____ 8. Copies of your checking and saving account statements for the past twelve (12) months.

_____ 9. Copies of your investment and brokerage account statements for the past twelve (12) months.

_____ 10. Copies of your Certificates of Deposit, Bonds, or Stock.

_____ 11. Copies of your IRA, 401(K), SEP, PERS, Pension, Deferred Compensation and any other retirement account for the past twelve (12) months.

_____ 12. Copies of the declaration sheet for all life insurance policies owned by you or on which you have been a beneficiary for the past twelve (12) months.

_____ 13. Copies of all credit card statements on which you have made charges for the past six (6) months.

_____ 14. Copies of all loans, mortgages, promissory notes, or other documents showing debts owned by you, or debts owed to you by others.

_____ 15. Copies of all deeds to real property.

_____ 16. Copies of all certificates of title. (Example: Boats, Vehicles, Campers, etc.)

_____ 17. Copies of all appraisals.

___ 18.Copies of all documents referenced or used to complete the 8.05 Financial Statement Form.

Requested by ( ) mail ( ) fax or ( ) hand delivery on this the _____ day of __________, 20__.

____

____

____

(Signature, address and telephone number of requesting party or his/her attorney)

8.05 FINANCIAL DECLARATION DOCUMENT PRODUCTION RESPONSE

Pursuant to the 8.05 Financial Declaration Document Production Request form dated ______________________ and requested by____________________ (name of opposing party or his/her attorney) I, ____________________ (name of party or attorney) certify that I have produced the following documents (check all that are produced). For those not produced, I certify that I do not have copies in my possession or control, nor are copies available to me upon reasonable request. If I have failed to produce documents for any other reason, those reasons are set forth below and correspond to each numbered request; and I certify that those reasons are true and correct.

_____ 1. Copies of my past three (3) year's Federal and State Income Tax returns, in full form as filed.

_____ 2. A copy of your most recent Social Security Earnings Statement or a completed Form SSA-7050-F4.

_____ 3. My most recent pay check stub.

_____ 4. My most recent W-2's.

_____ 5. All 1099's received by me in the past year.

_____ 6. All K-1's received by me in the past year.

_____ 7. Copies of the past three (3) year's Federal and State Tax Income Tax returns, in full form as filed, for any partnership, limited liability company, corporation or limited partnership in which I own or have an interest

_____ 8. Copies of my checking and saving account statements for the past twelve (12) months.

_____ 9. Copies of my investment and brokerage account statements for the past twelve (12) months.

_____ 10. Copies of my Certificates of Deposit, Bonds, or Stock.

_____ 11. Copies of my IRA, 401(K), SEP, PERS, Pension, Deferred Compensation and any other retirement account for the past twelve (12) months.

_____ 12. Copies of the declaration sheet for all life insurance policies owned by me or on which I have been a beneficiary for the past twelve (12) months.

_____ 13. Copies of all credit card statements on which I have made charges for the past six (6) months.

_____ 14. Copies of all loans, mortgages, promissory notes, or other documents showing debts owned by me, or debts owed to me by others.

_____ 15. Copies of all deeds to real property.

_____ 16. Copies of all certificates of title. (Example: Boats, Vehicles, Campers, etc.)

_____ 17. Copies of all appraisals.

_____ 18. Copies of all documents referenced or used to complete the 8.05 Financial Statement Form.

Reason(s) for failure to produce documents requested in ______ (insert request number):____
____
____

Reason(s) for failure to produce documents requested in ______ (insert request number):____
____
____

So CERTIFIED and PRODUCED by ( ) mail, ( ) fax, or ( ) hand delivered to: ________________________________ (other party or his/her attorney including full name, address and fax number) on this the _____ day of __________, 20__.

____

____

____

(Signature, address and telephone number of producing party or his/her attorney)

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UNIFORM RULES OF JUSTICE COURT

Adopted Effective May 1, 1995; Amended Effective July 1, 2017; amended effective July 1, 2020

Editor's Note. On December 15, 2016, the Supreme Court of Mississippi approved the addition of a new body of rules, the Mississippi Rules of Criminal Procedure, which altered, duplicated, supplemented or replaced certain provisions of the Uniform Rules of Circuit and County Court and the Uniform Rules of Procedure for Justice Court.

"The Mississippi Rules of Criminal Procedure are designed to provide comprehensive and uniform practice and procedure for criminal proceedings in all Mississippi trial courts, including justice courts, municipal courts, county courts, and circuit courts, except as otherwise provided. They replace practice under formerly applicable provisions of the Uniform Rules of Circuit and County Court and the Uniform Rules of Procedure for Justice Court." Comment to Mississippi Rules of Criminal Procedure, Rule 1.1.

The Uniform Rules of Circuit and County Court and Uniform Rules of Procedure for Justice Court have been significantly amended to conform to the addition of the Rules of Criminal Procedure, effective July 1, 2017.

Former Uniform Rules of Procedure for Justice Court	Former revised Uniform Rules of Procedure for Justice Court, effective July 1, 2017	Renumbered Uniform Rules of Procedure for Justice Court, effective July 1, 2020
Rule 1.01	Rule 1.01	Rule 1
Rule 1.02	Rule 1.02	Rule 2
Rule 1.03	Deleted	N/A
Rule 1.04	Rule 1.03	Rule 3
Rule 1.05	Rule 1.04	Rule 4
Rule 1.06	Rule 1.05	Rule 5
Rule 1.07	Rule 1.06	Rule 6
Rule 1.08	Deleted	N/A
Rule 1.09	Deleted	N/A
Rule 1.10	Rule 1.07	Rule 7
Rule 1.11	Deleted	N/A
Rule 1.12	Deleted	N/A
Rule 1.13	Deleted	N/A
Rule 1.14	Deleted	N/A
Rule 1.15	Rule 1.08	Rule 8
Rule 1.16	Rule 1.09	Rule 9
Rule 1.17	Rule 1.10	Rule 7
Rule 1.18	Rule 1.11	N/A
Rule 1.19	Deleted	N/A
Rule 1.20	Deleted	N/A
Rule 1.21	Deleted	N/A
Rule 1.22	Deleted	N/A
Rule 1.23	Deleted	N/A
Rule 1.24	Deleted	N/A
Rule 1.25	Deleted	N/A
Rule 2.01	Rule 2.01	Rule 1
N/A	Rule 2.02	Rule 1(c)
N/A	Rule 2.03	Rule 1(b)
N/A	Rule 2.04	Rule 5(d)

Former Uniform Rules of Procedure for Justice Court	Former revised Uniform Rules of Procedure for Justice Court, effective July 1, 2017	Renumbered Uniform Rules of Procedure for Justice Court, effective July 1, 2020
Rule 2.02	Rule 2.05	Rule 11
Rule 2.03	Rule 2.06	Rule 12
Rule 2.07	Rule 2.13	Rule 16
Rule 2.08	Rule 2.14	Rule 17
Rule 2.09	Rule 2.15	Rule 18
N/A	Rule 2.16	Rule 19
Rule 2.10	Rule 2.17	Rule 23
Rule 2.11	Rule 2.18	Rule 20
Rule 2.12	Rule 2.19	Rule 23
N/A	Rule 2.20	Rule 9(d)
N/A	Rule 2.21	Rule 9(d)
N/A	Rule 2.22	Rule 9(d)
N/A	Rule 2.23	Rule 9(d)
N/A	Rule 2.24	Rule 9(d)
N/A	Rule 2.25	Rule 9(d)
Rule 2.13	Rule 2.26	Rule 22
Rule 2.14	Rule 2.27	Rule 24
Rule 2.15	Rule 2.28	Rule 25
N/A	Rule 2.29	Rule 27
Rule 3.01	Rule 3.01	Rule 1
Rule 3.02	Deleted	N/A
Rule 3.03	Deleted	N/A
Rule 3.04	Deleted	N/A
Rule 3.05	Deleted	N/A
Rule 3.06	Deleted	N/A
Rule 3.07	Deleted	N/A
Rule 3.08	Deleted	N/A
Rule 3.09	Deleted	N/A
Rule 3.10	Deleted	N/A

Renumbered Uniform Rules of Procedure for Justice Court, effective July 1, 2020	Former revised Uniform Rules of Procedure for Justice Court effective July 1, 2017	Former Uniform Rules of Procedure for Justice Court
Rule 1	Rule 1.01	Rule 1.01
Rule 2	Rule 1.02	Rule 1.02
N/A	Deleted	Rule 1.03
Rule 3	Rule 1.03	Rule 1.04
Rule 4	Rule 1.04	Rule 1.05
Rule 5	Rule 1.05	Rule 1.06
Rule 6	Rule 1.06	Rule 1.07
N/A	Deleted	Rule 1.08
N/A	Deleted	Rule 1.09
Rule 7	Rule 1.07	Rule 1.10
N/A	Deleted	Rule 1.11
N/A	Deleted	Rule 1.12
N/A	Deleted	Rule 1.13
N/A	Deleted	Rule 1.14
Rule 8	Rule 1.08	Rule 1.15
Rule 9	Rule 1.09	Rule 1.16
Rule 10	Rule 1.10	Rule 1.17

Renumbered Uniform Rules of Procedure for Justice Court, effective July 1, 2020	Former revised Uniform Rules of Procedure for Justice Court effective July 1, 2017	Former Uniform Rules of Procedure for Justice Court
Rule 10	Rule 1.11	Rule 1.18
N/A	Deleted	Rule 1.19
N/A	Deleted	Rule 1.20
N/A	Deleted	Rule 1.21
N/A	Deleted	Rule 1.22
N/A	Deleted	Rule 1.23
N/A	Deleted	Rule 1.24
N/A	Deleted	Rule 1.25
Rule 1	Rule 2.01	Rule 2.01
Rule 1(c)	Rule 2.02	N/A
Rule 1(b)	Rule 2.03	N/A
Rule 5(d)	Rule 2.04	N/A
Rule 11	Rule 2.05	Rule 2.02
Rule 12	Rule 2.06	Rule 2.03
Rule 15(b)	2.07	N/A
Rule 14(b)	Rule 2.08	Rule 2.04
Rule 21	Rule 2.09	N/A
Rule 21	2.10	N/A
Rule 13	2.11	Rule 2.05
Rule 23	Rule 2.12	Rule 2.06
Rule 16	Rule 2.13	Rule 2.07
Rule 17	Rule 2.14	Rule 2.08
Rule 18	Rule 2.15	2.09
Rule 19	Rule 2.16	N/A
Rule 23	Rule 2.17	Rule 2.10
Rule 20	Rule 2.18	2.11
Rule 23	Rule 2.19	Rule 2.12
Rule 9(d)	Rule 2.20	N/A
Rule 9(d)	Rule 2.21	N/A
Rule 9(d)	Rule 2.22	N/A
Rule 9(d)	Rule 2.23	N/A
Rule 9(d)	Rule 2.24	N/A
Rule 9(d)	Rule 2.25	N/A
Rule 22	Rule 2.26	Rule 2.13
Rule 24	Rule 2.27	Rule 2.14
Rule 25	Rule 2.28	Rule 2.15
Rule 27	Rule 2.29	N/A
Rule 1	Rule 3.01	Rule 3.01
N/A	Deleted	Rule 3.02
N/A	Deleted	Rule 3.03
N/A	Deleted	Rule 3.04
N/A	Deleted	Rule 3.05
N/A	Deleted	Rule 3.06
N/A	Deleted	Rule 3.07
N/A	Deleted	Rule 3.08
N/A	Deleted	Rule 3.09
N/A	Deleted	Rule 3.10

GENERAL RULES

Rule
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5. Court Records and Docket.
6. Correction of clerical errors.
7. Recusal of judges.
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9. Jury Trials.
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22. Mistrial.
23. Default judgments and dismissals.
24. Post-Judgment actions.
25. Enforcement of judgments.
26. Contempt of court.
27. Civil appeals from justice court.

Cross References — Justice Courts, see Mississippi Code of 1972 § 9-11-1 et seq.

Practice and procedure before Justice Courts, see Mississippi Code of 1972 § 11-9-1 et seq.

GENERAL RULES

Rule 1. Scope of rules.

(a) These are the Rules of Justice Court and may be cited as RJC: e.g., RJC 1. They shall govern procedures in justice courts. Rules 1-10 shall be applicable to all cases, whether civil or criminal in nature. Rules 11-27 shall only be applicable to civil cases. The Mississippi Rules of Criminal Procedure shall apply to all criminal cases before the justice courts and shall supersede any conflicting provision of these rules.

(b) No rule of procedure, local or otherwise, shall be adopted without the approval of the Mississippi Supreme Court. *See* MRCrP 1.9 (Local Court Rules).

(c) Any person who violates these rules may be subject to sanctions, contempt proceedings, or disciplinary action.

Editor's Note — This rule formerly appeared as Rule 1.01 and also includes provisions similar to those found in former Rules 2.01, 2.02 and 2.03. Rule 1.01 was amended and renumbered as this rule, effective July 1, 2020.

Rule 2. Courtroom decorum and security.

The court shall be opened formally and conducted with dignity and decorum at all times. The judge shall wear a judicial robe at all times when presiding in open court. Each officer of the court shall be responsible for promotion of respect for the court. No one shall carry firearms or weapons of any description in the courtroom, except:

(1) the bailiffs;

(2) any necessary guards of a prisoner;

(3) other law enforcement or security authorized by the court to do so; or;

(4) the judge if he/she has met the requirements set forth in section 97-37-7 of the Mississippi Code or as provided by applicable law.

In the interest of security, all persons entering the courtroom may be searched. Any or all individuals may be excluded or removed from the courtroom for engaging in disorderly, disruptive, or contemptuous conduct, or when their conduct or presence constitutes a threat or menace to the court, parties, attorneys, witnesses, jurors, officials, members of the public, or a fair trial.

Editor's Note — This rule formerly appeared as Rule 1.02. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 3. Use of cameras, recording and broadcasting equipment.

Any attorney of record or self-represented litigant may record or have recorded any justice court proceeding by audiovisual-recording device or stenographically consistent with section 9-13-32 of the Mississippi Code. Any other use of cameras, recording devices, or broadcasting equipment shall be governed by Canon 3B(12) of the Mississippi Code of Judicial Conduct or other applicable rules.

Editor's Note — This rule formerly appeared as Rule 1.03. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 4. Ex Parte Communications.

The judge shall not allow any person:

(1) to discuss in his/her presence the law or facts or alleged facts of any case then pending in the court, or likely to be instituted therein, except as allowed by law in the orderly progress of proceedings under these rules, or

(2) to influence his/her decision in any manner that is prohibited by these rules or the Mississippi Code of Judicial Conduct.

Editor's Note — This rule formerly appeared as Rule 1.04. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 5. Court Records and Docket.

(a) *Clerk's duty to keep papers.* No original record, or any part of a file, record, or court papers, shall be taken from the clerk's custody without the permission of the clerk of the court.

(b) *Docket.* The docket of the court shall at all times remain in the office of the justice court clerk. The clerk shall retain custody of the docket, make all entries thereon, keep it safe, and provide it to the court for examination in the office. The docket may be maintained by computer. Failure of a judge to sign the docket shall not invalidate the actions of the court contained therein.

(c) *Uniform case record.* The judge shall sign the uniform case record of each case pursuant to section 9-11-11 of the Mississippi Code.

(d) *Signing bonds prohibited.* No officer of the court shall sign any bond of any kind in or to any court of this state. Bonds are controlled by statutory procedures.

Editor's Note — This rule formerly appeared as Rule 1.05, and also includes provisions similar to those found in former Rule 2.04. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 6. Correction of clerical errors.

Upon the motion of any party, or upon the judge's own initiative, the judge may correct clerical errors in any judgments, orders, or other parts of the record after notice to all parties in the case, up until the time a certified copy of the record in the case is transmitted by the clerk to the higher court on appeal.

Editor's Note — This rule formerly appeared as Rule 1.06. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 7. Recusal of judges.

(a) *Disqualified judge to enter a written order of recusal.* Any justice court judge who is disqualified under Canon 3E of the Mississippi Code of Judicial Conduct from participating in a case shall enter a written order of recusal. Parties and their attorneys may waive a judge's disqualification pursuant to Canon 3F of the Mississippi Code of Judicial Conduct.

(b) *Reassigning case.* If a judge is disqualified from participating in a case, the justice court clerk shall assign the action to another justice court judge of the county to hear the case. If no justice court judge is able to serve because of recusals, or is otherwise unable to serve, then a circuit court judge of the district may appoint any justice court judge from another county to hear the case.

(c) *Reimbursement of expenses.* Any justice court judge assigned or appointed to participate in a case under subdivision (b) of this rule shall be entitled to reimbursement of expenses pursuant to section 25-3-41 of the Mississippi Code and as otherwise allowed by law.

Editor's Note — This rule formerly appeared as Rule 1.07. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 8. Appointment of interpreter.

(a) *Interpreters for the deaf or hearing impaired.* Interpreters for the deaf or hearing impaired shall be appointed pursuant to sections 13-1-301 through 13-1-315 of the Mississippi Code. An appointed interpreter for the deaf or hearing impaired is entitled to reasonable fees and expenses as set forth in section 13-1-315 of the Mississippi Code.

(b) *Foreign language interpreters.* Upon the motion of any party, or upon the judge's own initiative, the judge shall determine whether a foreign language interpreter is needed for a party or witness to ensure the fair administration of justice. Any appointment of a foreign language interpreter shall be pursuant to applicable rules and policies of the Mississippi Supreme Court and the Mississippi Administrative Office of Courts. An appointed foreign language interpreter is entitled to reasonable fees and expenses as set forth in section 9-21-81 of the Mississippi Code.

(c) *Interpreter's oath.* Any interpreter appointed by the court under this rule shall take an oath to make a true translation pursuant to Rule 604 of the Mississippi Rules of Evidence and section 9-21-77 of the Mississippi Code.

Editor's Note — This rule formerly appeared as Rule 1.08. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 9. Jury Trials.

(a) *Statutory right to a jury trial.* A jury trial may be demanded in criminal cases pursuant to section 99-33-9 of the Mississippi Code and in civil actions pursuant section 11-9-143 of the Mississippi Code.

(b) *Summons of jurors.* When a jury trial is demanded pursuant to a statutory right to a jury trial, the justice court clerk shall notify the circuit court clerk who shall issue summonses for a jury in the same manner as for circuit court. The summonses shall be returnable to justice court.

(c) *Procedures in criminal cases.* In criminals cases, the court shall conduct jury trials pursuant to the Mississippi Rules of Criminal Procedure as applicable to justice courts.

(d) *Procedures in civil actions.*

(1) *Composition of jury.* Juries shall consist of six (6) persons and, in the discretion of the court, an alternate juror. Any person called as a juror for the trial of any cause shall be examined under oath or upon affirmation as to his/her qualifications.

(2) *Voir dire.* Voir dire is the procedure whereby the court and the attorneys or parties ask questions of the venire to ensure the selection of a fair and impartial jury. It shall proceed in the following order:

(I) The judge asks questions of the venire;

(ii) The plaintiffs attorney or the plaintiff asks questions of the venire; and

(iii) The defendant's attorney or the defendant asks questions of the venire.

Individual jurors may be examined only by leave of court upon good cause shown. No hypothetical questions shall be allowed requiring any juror to pledge a particular verdict. Attorneys or parties shall not offer an opinion on the law. The judge may set a reasonable time limit for voir dire.

(3) *Selecting the jury panel.* The jury panel shall be selected, in the order of their appearance on the venire, as follows:

(I) The court shall consider all challenges for cause;

(ii) The plaintiffs attorney or the plaintiff may use one or both of its peremptory challenges, then tender to the defendant a full panel of accepted jurors;

(iii) The defendant's attorney or the defendant may use one or both of its peremptory challenges, then tender to the plaintiff a full panel of accepted jurors; and

(iv) Steps (ii) and (iii) of this subdivision are then repeated until a full panel of jurors has been accepted by both sides.

Each side shall have two (2) peremptory challenges. Objections shall be made at the time the panel is tendered to the opposing party. Upon the motion of any party, or upon the judge's own initiative, the judge shall excuse any juror from service in the case if there is reasonable ground to believe that such juror cannot render a fair and impartial verdict.

(4) *Alternate jurors.* Once a jury panel is selected, an alternate juror is selected following the same procedures set forth above for selecting the jury panel, except that each side is only allowed one peremptory challenge. The alternate juror shall take the oath of a juror and hear all evidence and arguments, but may not retire to deliberate the case unless a juror is excused by the court or becomes unable to serve.

(5) *Communications with jurors.* Jurors are not permitted to mix and mingle anywhere in the courthouse with the attorneys, the parties, the witnesses, or spectators. The judge must instruct jurors to avoid all contact with the attorneys, the parties, the witnesses, and any spectators.

(6) *Jury instructions.* Procedures for instructions to the jury shall be consistent with Rule 51 of the Mississippi Rules of Civil Procedure.

(7) *Jury deliberations.* The judge shall:

(I) give the jurors, on the record of each trial, the following oath or remind the jurors that they are still under the following oath: "You, and each of you, do solemnly swear (or affirm) that you will well and truly try all issues and execute all writs of inquiry that may be submitted to you, or left to your decision by the court, or under its direction, during the present term, and true verdicts give according to the evidence. So help you God.";

(ii) direct the jury to select one of its members to preside over the deliberations;

(iii) direct the jury to return its verdict in writing to the court; and

(iv) direct the jury to return its verdict in writing to the court; and

Unless otherwise authorized by the court, the jurors shall not disperse once deliberations have begun. After the jurors have retired to consider their verdict, the judge shall not recall the jurors to hear additional evidence.

(8) *Materials allowed during deliberation.* When retiring for deliberation, the jurors are allowed to take with them:

(I) the form of verdict approved by the court;
(ii) a copy of the written jury instructions;
(iii) any tangible evidence that was admitted at the trial; and
(iv) their personal notes made during the course of the trial.

(9) *Returning the verdict.* The verdict shall be in writing and returned in open court. A verdict of five or more of the jurors shall be taken as the verdict of the jury. Any verdict returned may be appealed pursuant to these rules.

(10) *Jury poll.* After a verdict is returned but before the jury is discharged, the judge shall on the request of either side, or may on his/her own initiative, poll the jurors individually by asking whether the returned verdict is indeed the verdict of the jury. The judge shall direct the jury to retire and deliberate further if the poll reveals that the verdict is less than five of the jurors.

(11) *Court costs.* The judge shall assess court costs of the jury trial to the losing party.

Editor's Note — This rule formerly appeared, in part, as Rule 1.09 and also includes provisions similar to those found in former Rules 2.20, 2.21, 2.22, 2.23, 2.24 and 2.25. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 10. Conduct of Counsel and Parties.

(a) *Attendance.* Prompt attendance is required by the attorneys and parties, the witnesses, and all other persons whose presence is required to conduct the business of the court.

(b) *Civility in proceedings.* The attorneys and parties must show professional courtesy and respect toward the judge, the jurors, the opposing attorneys and parties, the witnesses, and all other court personnel and participants within the courthouse. Any person engaging in behavior or tactics purposefully calculated to disrupt the proceedings or to irritate the judge, a party, an attorney, or a witness is subject to contempt.

(c) *Objections.* When addressing the court, the attorneys and parties must:

(1) stand unless excused for good cause by the court;
(2) give specific grounds on any objections to testimony; and
(3) make all objections to the judge, and not to opposing counsel.

(d) *Jury panels.* When addressing the jury panel, the attorneys and parties must stand unless excused for good cause by the court. Attorneys may directly address the jury panel only during voir dire, opening statements, and closing arguments.

(e) *Witnesses.* When examining witnesses, the attorneys and parties must:

(1) stand, except when excused for good cause by the court;
(2) limit themselves to asking questions; and
(3) refrain from making statements, quips, or side remarks.

Any examination of witnesses is to be conducted fairly and objectively, with the attorneys, parties, and witnesses showing courtesy and respect to one another. Attorneys and parties may not ask questions merely to embarrass or humiliate the witness.

(f) *Opening statements /Closing arguments.* When making an opening statement or closing argument, the attorneys and parties must:

(1) not denigrate or ridicule the opposing attorney;

(2) not call any juror by name;

(3) not have any personal contact with the jury whatsoever;

(4) not attempt to converse with or solicit audible answers from the jurors individually; and

(5) not thank the jury for acting as jurors.

The attorneys and parties are required to keep within proper bounds, and any attempt to inject an improper matter may be stopped by the court without the necessity of an objection. After the return of the verdict, the attorneys, the parties, and any spectators shall not express to the jury any congratulations, thanks, or condemnation for the verdict returned.

Editor's Note — This rule formerly appeared as Rule 1.10 and also includes provisions similar to those found in former Rule 1.11. Rule 1.10 was amended and renumbered as this rule, effective July 1, 2020.

CIVIL RULES

Rule 11. Form of action.

There shall be one form of action known as "civil action."

Editor's Note — This rule formerly appeared as Rule 2.05. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 12. Commencement of Civil Action.

(a) A civil action is commenced by filing the complaint with the court. The complaint shall state the evidence of the debt, statement of account, or other basis for the civil action and make a specific demand for damages and/r other relief allowed by law. If a claim is founded on an account or other written instrument, a copy thereof should be attached to or filed with the complaint unless sufficient justification for its omission is stated in the complaint. The plaintiff may file a single complaint against multiple defendants if it is alleged that each of them is liable on the claim.

(b) *Exceptions.* The following civil actions require a sworn complaint:

(1) Evictions (Miss. Code Ann.§ 89-7-29);

(2) Replevin (Miss. Code Ann. § 11-37-101);

(3) Distress for rents (Miss. Code Ann. § 89-7-57);

(4) Unlawful entry and detainer (Miss. Code Ann.§ 11-25-5); and

(5) Any other civil action requiring a sworn complaint by statutory procedures.

Editor's Note — This rule formerly appeared as Rule 2.06. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 13. Computation of Time.

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the date of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or any other day that the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or clerk's office is closed. When the period oftime prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. The court, in its discretion, may grant an extension of time.

Editor's Note — This rule formerly appeared as Rule 1.03. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 14. Service of Process.

(a) *Service of process defined.* Service of process for civil actions in justice court means serving a true copy of the summons and complaint upon the defendant in accordance with this rule.

(b) *Issuance of summons and form.* Summons shall be issued by the justice court clerk. Any summons issued under this rule shall name the court and the parties; be directed to the defendant; state the name and address of the plaintiffs attorney or, if unrepresented, of the plaintiff; state the date and time within which the defendant must appear and defend; notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint; be signed and dated by the justice court clerk; and bear the court's seal.

(c) *Service by constable.* Upon the filing of the complaint, the justice court clerk shall promptly deliver a true copy of the summons and complaint to the constable of the county of the defendant's usual place of abode or, if the defendant is an entity, to the constable of the county of the entity's place of business, to serve process upon the defendant. Within ten (10) days thereafter, unless service has been waived, the constable shall file an affidavit showing proof of service, or of attempted service after diligent search and inquiry pursuant to section 25-7-27 of the Mississippi Code, with the justice court clerk.

(d) *Manner of service upon an individual.*

(1) *Personal service.* The constable shall deliver a true copy of the summons and complaint to the defendant or to an agent authorized by appointment or by law to receive process. Service shall be deemed complete upon the date of service.

(c) *Size of paper.* All pleadings and other papers filed in any civil action governed by these rules shall be on paper measuring 8 ½ inches x 11 inches. But exhibits or attachments to pleadings may be folded and fastened to pages of the specified size if compliance is not reasonably practicable.

(d) *Electronic filing and storage.* Pleadings, motions, or any other application to the court may be filed and stored by computer or electronic means pursuant to rules and policies established by the Mississippi Supreme Court and the Mississippi Administrative Office of Courts.

Editor's Note — This rule formerly appeared, in part, as Rule 2.07. It was rewritten and renumbered as this rule, effective July 1, 2020.

Rule 16. Counterclaims and setoffs.

Counterclaims and setoffs shall be liberally allowed by the court. Failure to assert any counterclaim or setoff shall not bar a subsequent civil action of those claims. The judge shall dismiss without prejudice any counterclaim that exceeds the jurisdictional limits of justice court.

Editor's Note — This rule formerly appeared as Rule 2.13. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 17. Representation by guardian ad litem.

The judge may appoint a guardian ad litem who is an attorney to represent an infant or a vulnerable person as defined under section 43-47-5 of the Mississippi Code. The appointed guardian ad litem may sue or defend the civil action on behalf of such persons. Reasonable costs and fees of the guardian ad litem may be taxed as court costs.

Editor's Note — This rule formerly appeared as Rule 2.14. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 18. Substitution of parties.

(a) *If a party dies.* If a party dies and the claim is not thereby extinguished, the successors or representatives of the deceased party may file, within ninety (90) days of the party's death, a motion for the substitution of parties. The judge may dismiss without prejudice the action if the motion for substitution of parties is not filed timely.

In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

(b) *If a party is a minor or vulnerable person.* Upon the motion of any party, the judge may allow a civil action to be continued by or against a representative of a party who is a minor as defined under section 1-3-27 of the Mississippi

Code or a vulnerable person as defined under section 43-47-5 of the Mississippi Code.

(c) *If there is a transfer of interest.* Upon the motion of any party, the judge may direct that the person to whom the interest was transferred be substituted for, or joined with, the original party in the civil action.

(d) *If a party is a public officer who dies or resigns in office.* A civil action shall not abate if a party is a public officer acting in his/her official capacity who dies, resigns, or otherwise ceases to hold office. Instead, the public officer's successor shall be substituted as a party. The judge may enter an order of substitution at any time in the course of the action, but its omission shall not affect the substitution.

Editor's Note — This rule formerly appeared as Rule 2.15. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 19. Withdrawal of counsel.

An attorney who has made an entry of appearance may not withdraw from the case except with the permission of the court upon a showing of good cause after notice of withdrawal has been served on the attorney's client and upon all parties. Permission to withdraw shall not be unreasonably denied.

Editor's Note — This rule formerly appeared as Rule 2.16. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 20. Consolidation and separation of trials.

(a) *Consolidating actions.* When two or more civil actions with a common question oflaw or fact are pending before the court, the judge may:

(1) order a joint hearing or trial of any or all matters pertaining to the common question of law or fact;

(2) order all the actions consolidated for trial; or

(3) make such orders concerning proceedings on the action so as to avoid unnecessary costs or delay.

(b) *Separate trials.* The judge may order a separate trial of any claim in a civil action for reasons of:

(1) avoiding prejudice;

(2) expediting the resolution of claims in the action; or

(3) economical considerations neutral to the litigation.

Editor's Note — This rule formerly appeared as Rule 2.18. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 21. Subpoenas.

(a) *Generally.* Subpoenas for a trial or hearing in justice court shall conform to Rule 45 of the Mississippi Rules of Civil Procedure.

(b) *Requests.* Every request for a subpoena of a witness in a civil action shall:

(1) be in writing;

(2) contain the mailing and physical addresses of the witness and other information so as to furnish a sure guide to the person serving the subpoena;

(3) be delivered to the justice court clerk in a reasonable time before the trial date; and

(4) be signed and dated by the party requesting the subpoena.

The justice court clerk shall preserve each written request for subpoena within the court file.

(c) *Issuance.* Every subpoena in civil actions shall:

(1) be issued by the justice court clerk under the seal of the justice court;

(2) state the name and address of the court and the title of the action; and

(3) command each person to whom it is directed to attend and give testimony at a specified date, time, and place, and to bring to the hearing specified books, papers, documents, or other objects in the control and possession of the witness that are to be offered into evidence.

(d) *Service.* A subpoena in civil actions shall be served upon the witness personally by:

(1) the sheriff;

(2) the deputy sheriff;

(3) a constable; or

(4) any other person who is not a party and eighteen (18) years of age or older.

The endorsed return, or a written acknowledgment on the subpoena by the witness, shall be prima facie proof of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

(e) *Enforcement.* The judge may enforce a subpoena in civil actions by any means allowed by the Mississippi Code, including the issuance of an attachment pursuant to section 11-9-115 of the Mississippi Code, or these rules.

Editor's Note — This rule formerly appeared, in part, as Rule 2.10, and also includes provisions similar to those found in former Rule 2.09. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 22. Mistrial.

(a) *For misconduct by the defendant.* Upon motion of the plaintiff, the judge shall declare a mistrial if there occurs during the trial misconduct by the defendant, the defendant's attorney, or a defendant's witness resulting in substantial and irreparable prejudice to the plaintiffs action. But if there are two or more defendants, the judge shall not declare a mistrial as to any defendant who is not an offending party and who requests that the trial continue.

(b) *For misconduct by the plaintiff.* Upon motion of the defendant, the judge shall declare a mistrial if there occurs during the trial misconduct by the plaintiff or a plaintiff's witness resulting in substantial and irreparable prejudice to the defense.

(c) *Other reasons for declaring a mistrial.* Upon motion of any party, or upon the judge's own initiative, the judge shall declare a mistrial if:

(1) the trial cannot proceed in conformity with law; or

(2) the jury is deadlocked and there is no reasonable probability of a verdict.

Editor's Note — This rule formerly appeared as Rule 2.26. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 23. Default judgments and dismissals.

(a) *When the defendant fails to appear for trial.* If the defendant has been given proper notice of the date and time of trial but fails to appear, and the plaintiff appears, then the judge may enter a default judgment against the defendant provided:

(1) there is a factual basis to support the claim; and

(2) the judgment is not different in kind from or does not exceed the amount of that demanded in the complaint.

(b) *When the plaintiff fails to appear for trial.* If the plaintiff has been given proper notice of the date and time of trial but fails to appear on the trial date, and the defendant appears, then the judge may dismiss the case without prejudice.

(c) *When both the plaintiff and defendant fail to appear for trial.* If both the plaintiff and the defendant fail to appear on the trial date, then the judge may dismiss the case without prejudice.

(d) *When the plaintiff files a motion for dismissal.* If the plaintiff files prior to any responsive pleading or trial a written motion for the dismissal of the case, then the judge may dismiss the case without prejudice unless objected to by the defendant. Plaintiff's costs shall not be assessed against the defendant.

(e) *Setting aside a default judgment.* Unless an appeal has been perfected pursuant to these rules, a party may request the court to set aside a default judgment. Thereupon, the judge may stay the execution of the default judgment pending a hearing on the motion. After a hearing in which the parties to the action have been given notice and an opportunity to be heard, the judge may set aside the default judgment by written order as may be just and proper if he/she determines that good cause has been shown to support such order. In making this determination, the judge must weigh the following factors:

(1) the nature and legitimacy of the party's reasons for default,

(2) whether the party's claims or defenses have reasonable merit, and

(3) the nature and extent of prejudice that the opposing party would suffer if the default judgment is set aside.

Editor's Note — This rule formerly appeared as Rule 2.19 and also includes provisions similar to those found in former Rules 2.12 and 2.17. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 24. Post-Judgment actions.

Unless authorized by law, no post-judgment action shall be instituted upon a judgment until expiration often (10) days after its entry.

Editor's Note — This rule formerly appeared as Rule 2.27. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 25. Enforcement of judgments.

(a) *Statutory procedures to govern.* Procedures to enforce a civil judgment shall be pursuant to the Mississippi Code and any applicable rules and policies of the Mississippi Supreme Court and the Administrative Office of Courts.

(b) *Examining books, papers, and documents of judgment debtor.* The judgment creditor may examine the judgment debtor and his/her books, papers, or documents pursuant to sections 13-1-261 through 13-1-271 of the Mississippi Code.

Editor's Note — This rule formerly appeared as Rule 2.28. It was amended and renumbered as this rule, effective July 1, 2020.

Rule 26. Contempt of court.

Procedures in civil actions for contempt of court shall conform to Rule 32 of the Mississippi Rules of Criminal Procedure.

Editor's Note — This rule is new, effective July 1, 2020.

Rule 27. Civil appeals from justice court.

(a) Civil appeals from justice court shall be governed by Rules 5.01, 5.04, 5.07, 5.08 and 5.09 of the Uniform Rules of Circuit and County Court. Either party aggrieved by a justice court judgment rendered in a case of unlawful entry and detainer may, after final judgment, appeal to the circuit court of the county pursuant to section 11-51-83 of the Mississippi Code. The availability of writs of certiorari shall be as provided by the Mississippi Constitution and section 11-51-93 of the Mississippi Code.

(b) *Exception.* Any party aggrieved by the decision of a justice court judge to issue a temporary domestic abuse protection order has the right of a trial de novo on appeal in the chancery court having jurisdiction pursuant to section 93-21-15.1 of the Mississippi Code.

Editor's Note — This rule formerly appeared as Rule 2.29. It was amended and renumbered as this rule, effective July 1, 2020.

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ADMINISTRATIVE PROCEDURES FOR MISSISSIPPI ELECTRONIC COURTS

Electronic Means for Filing, Signing, Verification, and Service of Pleadings and Papers

December 2008; rev. September 2009; rev. May 2012, eff. July 1, 2012; rev. June 2016

Rule
1. Introduction and Scope of Electronic Filing.
2. Registration for MEC.
3. Electronic Filing and Service of Documents.
4. Orders.
5. Sealed Cases, Sealed Documents, Documents for in Camera Review, and Restricted Access.
6. Conventional Filing and Service of Documents.
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APPENDIX I. FORMS

Rule 1. Introduction and Scope of Electronic Filing.

In those chancery, circuit, and county courts which have adopted these procedures by local rule, the filing of court pleadings and documents is carried out electronically through the Mississippi Electronic Courts (MEC) system. This system permits properly registered attorneys to file documents and to view and search court records from any location over the Internet, twenty-four hours a day. Non-attorneys and non-registered attorneys may read only documents in the system by utilizing PAMEC. The following information explains the court procedures applicable to system use. This information is available on the MEC web site, *mec.ms.gov,* and should be referenced there for most recent revisions or modifications.

The following procedures govern the utilization of the system.

A. *Authorization for Electronic Filing.* Section § 9-1-53 of the Mississippi Code authorizes electronic filing in conjunction with Rule 5 of the Mississippi Rules of Civil Procedure, Rule 1.16 of the Uniform Rules of Circuit and County Court Practice, and Rule 1.13 of the Uniform Chancery Court Rules. These rules authorize the courts to establish practices and procedures for the serving, filing, signing, and verification of documents by electronic means. The following procedures shall govern use of MEC unless, due to extraordinary circumstances in a particular case, a judge determines in the exercise of discretion that it is appropriate to deviate from these procedures in the interest of justice.

B. *Participants in Electronic Filing.* The system permits attorneys to file documents with the court from any location over the Internet. While all parties, including those proceeding pro se, may register to receive "read only" public access accounts through PAMEC, only registered attorneys, as officers of the court, are permitted to file electronically.

C. *Training and Technical Assistance.* These procedures govern use of MEC and are not intended as a technical guide for the use of the system. Information regarding the equipment needed to participate in MEC, as well as information on training and access to computer-based tutorials, can be obtained from the MEC website, *mec.ms.gov*.

D. *Definitions and Instructions.* The term "conventional filing" means presentation to the clerk's office of a hard copy of a document which cannot or should not be filed electronically. The hard or paper copy should be accompanied by a an electronic storage device with the document in a text PDF file(s), if possible. If not, the document will be scanned for inclusion as an image PDF unless otherwise provided in these procedures. The "image" is not a searchable document; a text PDF is a searchable document.

The term "document" shall include pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filing by or to the court, whether or not the document is electronic or a hard or paper copy. "Hard copy" and "paper copy" are used interchangeably in these procedures.

"Electronic filing" means uploading a document in PDF format directly from the registered user's computer, to file that document in the court's case file using the court's Internet-based system. **Sending a document or pleading to the court via e-mail or facsimile does not constitute "electronic filing."**

The "E-Mail Address of Record" is the Internet e-mail address of each party or attorney in the case as maintained by MEC.

The "Events List" identifies the categories of documents which may be filed in the system.

The term "MEC" refers to the Mississippi Electronic Courts system and is used interchangeably with the term "system".

An "MEC Filing User" is an attorney who is registered to use the MEC; a "PAMEC User" is a person only entitled to read the documents filed.

A "Notice of Electronic Filing" (NEF) is generated automatically by MEC upon completion of an electronic filing. The Notice of Electronic Filing when e-mailed to the e-mail addresses of record in the case acts as the proof of service.

The term "PAMEC" refers to Public Access to Mississippi Electronic Courts, the public access component of MEC which is an automated public service that allows users to obtain case and docket information from courts which have implemented MEC.

The term "PDF" refers to Portable Document Format. A PDF document allows anyone to open the converted document across a broad range of hardware and software, with layout, format, links, and images intact.

"Restricted access" or "limited access" means that only eligible attorneys registered with MEC and court staff shall have internet access to the documents in the electronic case files.

E. *Selection and Designation of Cases for MEC.* Unless otherwise permitted by these administrative procedures or unless otherwise authorized by the assigned judge, all documents submitted for filing in courts which have implemented MEC shall be filed electronically by the attorney or shall be scanned and uploaded to the system by the clerk's office. Parties proceeding pro se shall not file electronically unless said pro se party is an attorney in good standing and admitted to practice in the court which has implemented MEC. (Amended effective October 25, 2018.)

Rule 2. Registration for MEC.

A. *Eligibility.* Attorneys admitted to practice in courts which have implemented the MEC, including attorneys admitted to practice in those courts under the *pro hac vice or pro bono publicus* provisions of the Mississippi Rules of Appellate Procedure, may register as MEC Users. No other person may register as an MEC user, even if he or she is a party proceeding *pro se.*

B. *Registration.*

1. Attorneys should register with the system electronically by accessing the Attorney Registration site at *courts.ms.gov/mec/mec.html.* Each attorney in a law firm must individually register.

2. Each attorney registering in the system will receive an Internet e-mail message after his or her password has been assigned. This is to insure that the attorney's Internet e-mail address has been entered correctly in the system and to convey the login and password information to the attorney.

3. An attorney's registration will constitute a waiver of conventional service of documents. The attorney agrees to accept service of notice of the electronic filing by authorized e-mail.

4. Attorneys are responsible for updating their mailing address or e-mail address on-line through MEC.

C. *Passwords.* Each attorney registered to participate in MEC shall be entitled to one system password. Attorneys may change their own passwords.

Pursuant to M.R.C.P. 11, every pleading, motion, and other paper (except lists, schedules, statements or amendments thereto) shall be signed by at least one attorney of record or, if the party is not represented by an attorney, all such papers shall be signed by the party. An attorney's password issued by MEC combined with the user's login identification serves as the attorney's signature for Rule 11 and other purposes. Therefore, it is imperative that an attorney protect and secure the password issued by MEC. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney to immediately notify the MEC helpdesk. In the event of the resignation or reassignment of the person with authority to use a password, the attorney should change the password immediately.

No attorney shall knowingly permit his or her password to be utilized by anyone other than an authorized employee of his or her office. Because the login and password together constitute an attorney's signature regardless of whether the attorney personally uses the login and password or delegates that authority to someone else, the attorney is responsible for safeguarding and protecting his or her login and password at all times. Once registered, the attorney shall be responsible for all documents filed with his or her password.

Rule 3. Electronic Filing and Service of Documents.

A. *Electronic Filing.*

1. Unless otherwise permitted by these procedures (e.g., see Section 6) or otherwise authorized by the assigned judge, all motions, pleadings, applications, briefs, memoranda of law, or other documents submitted for filing in civil and criminal cases in courts which have implemented MEC, no matter when a case was originally filed, should be filed electronically by the attorney or shall be scanned and uploaded to the system by the clerk's office. [1]

2. Electronically filed documents must meet the same requirements of format and page limits as documents "conventionally filed" (as defined in Definitions and Instructions) pursuant to the Mississippi Rules of Civil Procedure, Uniform Circuit Court and County Court Rules, and Uniform Chancery Court Rules

3. In order to file a document which requires leave of court such as an amended complaint or a document to be filed out of time, the proposed document shall be attached as an exhibit to a motion. If the motion is granted, **the attorney must electronically re-file the proposed document as an independent document after entry of the court's order.**

4. Electronic transmission of a document consistent with these procedures will, upon the complete transmission of the same to the clerk's office, constitute filing of the document for all purposes of the Mississippi Rules of Civil Procedure, and will constitute entry of that document onto the docket maintained by the clerk pursuant to M.R.C.P. 79.

5. The attorney filing a document is responsible for ensuring the complete transmission of the document being electronically filed. A receipt acknowledging the complete transmission of the document which has been filed will immediately appear on the filer's screen. Parties can also verify the filing of documents by inspecting the court's electronic docket sheet.

6. Unless otherwise provided in these procedures, the clerk's office shall not maintain a paper court file in any case which is subject to these procedures. The official court record shall be the electronic file maintained by the court, supplemented with any conventionally-filed documents or exhibits filed in accordance with these procedures.

7. All documents which form part of a single pleading and which are being filed at the same time may be electronically filed together under one document number, e.g., the motion and a supporting affidavit, with the exception of memoranda in support.

8. Memoranda in support shall be electronically filed separately and shown as a related document to the motion. Memoranda in support of motions or responses do not need to be mailed to the presiding judge.

9. In filing documents and attachments to documents, a filing party should electronically image, i.e., "scan," the paper exhibit that is less than ten

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[1] 1 Documents filed in the MEC system must be in PDF format. A document created with almost any word-processing program can be converted to PDF format. The PDF program in effect takes a picture of the original document and allows anyone to open the converted document across a broad range of hardware and software, with layout, format, links, and images intact. Instructions on how to save a document in PDF format are located on the MEC website at *courts.ms.gov/mec/mec.html.* For information on PDF, users may visit the websites of PDF vendors, such as *www.adobe.com/products/acrobat or www.fineprint.com.*

megabytes (10 MB) and submit the exhibit as an attachment in PDF format. Some attached documents, whether a scanned exhibit or other evidence, may exceed the 10MB size requirement on the system. When this occurs, the document shall be reduced to as many 10MB "bundles" as required to file the entire document. Each bundle is filed as a separate attachment, and requires that the division of the attachments be listed in the description of the attachment, i.e., "Exhibit 1 - Pages 1 - 43" or "Exhibit 2 - Pages 44 - 83." Attorneys are encouraged to file an Exhibit List as the first attachment.

10. All motions, pleadings, and other papers filed electronically during or within twenty-four hours prior to a trial, hearing, or other proceeding related to the case in which the filing occurs shall be accompanied by a paper copy of the filing to be distributed to the appropriate chambers by the clerk.

11. In an emergency, an attorney who is not an MEC Filing User may conventionally file documents in courts which have implemented MEC if it is impracticable to become an MEC Filing User or designate other registered counsel prior to filing the documents. However, the paper filing must be followed by a motion seeking leave to file in paper form and showing cause for not becoming an MEC Filing User and for not designating other registered counsel in time to file the documents electronically.

12. Any fee required for filing a pleading or paper with the court is payable as required by statute. The clerk's office will document the receipt of fees on the docket with a text-only entry. The court will not maintain electronic billing or debit accounts for lawyers or law firms.

B. *Signatures.*

1. **Non-Attorney Signatures:** If a document must be filed which contains original signatures, such as affidavits, contracts, bonds, etc., or which requires either verification or an unsworn declaration under any rule or statute, the filing party or the clerk's office shall scan the original document, electronically file it on the system, and the filing party shall retain the originally executed copies for subsequent production to the assigned judge if so ordered for inspection upon request by a party or the judge's own motion, until one year after final resolution of the action (including appeal, if any), or as otherwise required by rule or statute.

The electronically filed document as it is maintained on the system shall constitute the official version of that record. The court will not maintain a paper copy of the original document except as otherwise provided in these procedures.

2. **Attorney Signatures:** A pleading or other document requiring an attorney's signature shall identify the attorney in the following manner, whether filed electronically or submitted on disk or CD to the clerk's office:

"s/(attorney name)" (e.g., s/Jane Doe)
Jane Doe
Mississippi Bar Number
Firm Name
Firm Address
Telephone Number

Fax Number
E-Mail Address

An attorney challenging the authenticity of an electronically filed document must file a timely objection to the document.

3. **Criminal cases:** Unless otherwise provided by these procedures, all documents which must contain original signatures, such as a grand jury foreperson, a defendant, a probation officer, or some other state or local officer or agent, or which require either verification or an unsworn declaration under any rule or statute, shall be filed conventionally on paper, scanned into the system, and maintained in the clerk's office. The electronically filed document as it is maintained on the system shall constitute the official version of that record.

C. *Title of Documents.* The person electronically filing a pleading or other document will be responsible for designating a filing event for the pleading or other document by using one of the categories contained in the Events List on the MEC website at *courts.ms.gov/mec/mec.html.* The filing event selected serves only as a descriptive reference and does not alter the title which appears on the pleading or document being filed.

D. *Filing Deadlines.* Filing documents electronically does not alter any filing deadlines or any time computation pursuant to M.R.C.P. 6. All electronic transmissions of documents must be completed (i.e., received completely by the clerk's office) prior to **midnight Central Standard (or Daylight Savings) Time.** For the filing to be **completed,** the filer must have received the Notice of Electronic Filing from the court. The Notice of Electronic Filing reflects the time the electronic transmission of a document is completed. Accordingly, a document will be deemed timely filed if the Notice of Electronic Filing reflects time prior to midnight. However, the assigned judge may order that a document be filed by a time certain, which then becomes the filing deadline. Although documents can be filed electronically 24 hours a day, filers are strongly encouraged to file all documents during office hours.

E. *Errors in Filing.* Once a document is submitted electronically, it becomes part of the court file, and corrections may be made only by the court and/or the clerk's office. The system **will not permit** the filing party to make changes to the document(s) or docket entry once the transaction has been accepted, and the filer should **not** attempt to refile the documents(s).

As soon as possible after an error is discovered, the filing party should contact the clerk's office with the case number and document number for which the correction is being requested. If appropriate, the clerk's office will make an entry on the docket indicating that the document was filed in error, or otherwise describing the error. The clerk's office will inform the filing party of the corrective steps which need to be taken.

F. *Service of Filed Documents on Parties.*

1. The system will generate a "Notice of Electronic Filing" when any document is filed. This notice represents service of the document on attorneys who are registered participants with the system. Except as provided in Section 6, regarding conventional filing, the filing party shall not be required to serve

any pleading [2] or other documents on any party receiving electronic notice. A Certificate of Service [Form 1] must still be attached to the document.

2. The filing party shall also serve those parties not designated or able to receive electronic notice but nevertheless are entitled to notice of said pleading or other document in accordance with the Mississippi Rules of Civil Procedure, except as otherwise provided by order of the court. If such service of a paper copy is to be made, it shall be done in the manner provided in the Mississippi Rules of Civil Procedure.

3. A party may not electronically serve a summons and complaint, but instead must perfect service according to M.R.C.P. 4 or 81, as applicable. For issuance of a summons, see Section 6.A.2.

4. Service pursuant to Section 3(F)(1) will constitute service pursuant to M.R.C.P. 5(b) and will entitle the party being served, as in conventional service by U.S. mail, to the additional three days provided by M.R.C.P. 6(e).

G. *Certificate of Service.* A Certificate of Service is still a requirement when filing documents electronically. A sample **Certificate of Service is attached as Form 1.**

Rule 4. Orders.

A. *General.* The system will generate a Notice of Electronic Filing for entry of all orders as described in these procedures. Any order signed electronically has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket conventionally.

B. *Text Only Orders.* The assigned judge or the clerk's office, if appropriate, may grant routine orders by a text-only entry upon the docket. In such cases, no PDF document will issue and the entry will contain language that "no further written order will issue from the court." The text-only entry shall constitute the court's only order on the matter. A text-only order carries the same weight and authority as a written order signed by the judge.

C. *Proposed Orders Procedure.*

1. **Electronic Submittals — Generally:** Except as provided in subsection 3 below, all proposed orders must be e-mailed to the assigned judge and all parties. The judge's e-mail address is listed on the MEC website, *courts.ms.gov/mec/mec.html.* A proposed order should not be filed. The proposed order must be in WORDPERFECT FORMAT or such other word-processing format established by the judge. The subject line of the e-mail message should indicate the case title, cause number and document number of the motion, e.g., *Smith v. Jones 3:02-cv-1234, motion#* ____ . Final orders will be electronically signed and filed in the system.

2. **Electronic Submittals — Joint Orders:** In the case of a proposed order to bear the signature of two or more attorneys, the following procedure should be used:

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[2] 2 The term "pleading" refers only to those documents listed in Mississippi Rules of Civil Procedure 7(a).

a. The drafting attorney shall initially confirm that all persons required to sign the proposed order have reviewed it and that it acceptable as presented (e.g., agreed as to form only or as to form and substance).

b. The drafting attorney then shall submit the proposed order to the judge electronically, indicating the signatories, e.g., "s/Jane Doe," "s/John Doe," etc. and including a signature line for the judge. The e-mail to the judge shall confirm that all persons required to sign the proposed order have reviewed the proposed order and that it is acceptable as presented. All persons required to sign the proposed order shall be copied on the e-mail to the judge.

c. A non-drafting signatory or party who disputes the authenticity of a proposed order containing multiple signatures or the authenticity of the signatures themselves must file an objection to the proposed order within ten (10) days of the transmittal of the proposed order to the judge. However, the judge may enter the proposed order at any time after it is submitted.

3. **Hard-Copy Proposed Orders:**

a. If a hard copy of a proposed order includes hand-written signatures, the drafting attorney shall submit the proposed order as requested by the judge either by: (1) sending the hard copy to the judge; or (2) electronically submitting the proposed order as set forth in subsection 2.b. with the drafting attorney retaining the hard copy of the proposed order containing the original signatures.

b. If a proposed order is tendered in person (e.g., at a hearing or in chambers), the presenting attorney shall submit a hard copy of the proposed order bearing the hand-written signatures of all persons required to sign the order. If the judge approves the order, it will be signed, scanned, and filed in the system.

D. *Proposed Case Management Orders and Final Pretrial Orders.* Proposed case management orders and final pretrial orders, when required by the judge assigned to the case, shall be submitted by e-mail to the appropriate judge at the e-mail address listed on the AOC website, *courts.ms.gov/mec/mec.html.* A signature line for the judge shall be included.

E. *Entry of Orders.* The office of the clerk of court or a judge shall file all orders, decrees, judgments, and proceedings of the court in accordance with these procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk under M.R.C.P. 58 and 79, URCCC 11.05, and UCCR 5.06. The system will generate a Notice of Electronic Filing when any document is filed, including orders of the court. The system generated notice fulfills the clerk's notice requirements under M.R.C.P. 77(d) on those attorneys who are registered participants with the system. Pursuant to M.R.C.P. 77(d), the clerk shall also serve those attorneys or parties not designated or able to receive electronic notice but nevertheless are entitled to notice of said pleading or other document in accordance with the Mississippi Rules of Civil Procedure.

Rule 5. Sealed Cases, Sealed Documents, Documents for in Camera Review, and Restricted Access.

A. *Filing of Cases Under Seal.*

1. **The following types of proceedings shall be treated as cases filed under seal** pursuant to the procedures set forth in this section: commitment proceedings pursuant to §§ 41-21-61 et seq., 41-30-1 et seq., 41-31-17, and 41-32-1; adoption proceedings; youth court proceedings; expungements; and petitions for waiver of consent to abortion.

2. All documents in sealed cases shall be submitted conventionally to the clerk's office for filing.

3. **Viewing Sealed cases.** Only authorized court personnel will be able to view docket entries and documents in sealed cases.

4. **Service and Notice.** Parties must not use the Court's electronic notice facilities to serve documents in sealed cases. An NEF will not be sent on documents filed in sealed cases. Service should be made in accordance with the Mississippi Rules of Civil Procedure, and a certificate of service must be attached to the filed document.

B. *Filing of Documents Under Seal.*

1. **With Prior Court Order.** Any document ordered to be filed under seal shall be electronically filed using the docket event "Sealed Document", which is found under civil /other filings /other documents /sealed document.

2. **Without Prior Court Order.** A party who has a legal basis for filing a document under seal without prior court order shall electronically file an appropriate motion, such as a motion for leave to file under seal. The motion shall include an explanation of how the documents meet the legal standards for filing sealed documents. By filing documents under seal, the filer is representing that these standards have been met. Filings that do not comply with or are made in disregard of these standards may result in the imposition of sanctions, including but not limited to ordering the sealed documents to be made public. The document in question shall not be attached to the motion as an attachment but rather shall be electronically filed contemporaneously as a separate event "Sealed Document", which is found under civil /other filings /other documents /sealed document.

3. **Filing Sealed Motions.** In the rare event that the motion must itself be filed under seal, the motion shall be electronically filed using the docket event "Sealed Motion", which is found under civil /motions /sealed motion.

4. **Service and Notice.** A publicly viewable NEF will be generated for a sealed document, but the document will not be viewable. The NEF will only contain the statement "Sealed Document." Parties must not use the court's electronic notice facilities to serve sealed documents. Service must be made in accordance with the Mississippi Rules of Civil Procedure. A certificate of service must be attached to the filed document.

5. **Denial of Leave to File.** In the event that a motion for leave to file under seal is denied, the document tendered shall remain under seal, and it will not be considered by the presiding judge for any purpose. If the filer wishes

to have the document considered by the court, it must be re-filed in the normal fashion as an unsealed document. The Court may, in its discretion, order a sealed document to be made public if (1) the document is filed in disregard of the legal standards for such filings, or (2) if the document is so intricately connected with a pending matter that the interests of justice are best served by doing so.

6. **Viewing Sealed Documents.** Only authorized court personnel will be able to view sealed documents although the docket text "sealed document" is publicly viewable.

C. *Documents Submitted for In Camera Review.* Documents submitted for in camera review shall follow the same procedures as Documents Under Seal set forth in Section 6.B. above.

D. *Restricted Access.* A case involving one or more of the following natures of suit shall have Restricted Access: Debt Collection; Garnishment; Replevin; Child Custody/Visitation; Child Support; Divorce: Fault; Divorce: Irreconcilable Differences; Modification; Paternity; Termination of Parental Rights; Birth Certificate Correction; Conservatorship; Guardianship; Minor's Settlement; Protection from Domestic Abuse Law.

1. Internet access to those documents filed in the cases identified above will be on a "restricted access" basis, i.e., limited to eligible attorneys registered with MEC and court staff. Docket sheets will be available over the Internet to non-parties, who will also have direct access at the clerk's office to the documents on file in the case.

2. A publicly viewable NEF will be generated for a restricted access document, and the document will be attainable through the NEF. Parties will use the court's electronic notice facilities to serve restricted access documents.

3. In addition to those cases identified above, a party may file a motion to restrict a document and/or case. The motion must state the reason and show good cause for restricting remote access to the document or case. If the motion is granted, remote access to the document or case will be limited to eligible attorneys registered with MEC and court staff. Docket sheets will be available over the Internet to non-parties, who will also have direct access at the clerk's office to the documents on file in the case. (Amended effective October 25, 2018.)

Rule 6. Conventional Filing and Service of Documents.

A. *Conventional Filings.* As used in these procedures, a "conventionally" filed or submitted document or pleading is one presented to the clerk or a party on 8-½ inch by 11 inch paper or other non-electronic, tangible format; **documents filed conventionally should NOT be stapled or bound, but may be clipped.** The clerk's office will scan and upload all original documents brought or sent to the clerk's office for filing unless otherwise provided in these procedures. Once uploaded, the original document will be discarded unless otherwise required to be maintained as set forth in these procedures.

1. **Civil complaints** cannot be initiated electronically via the MEC system. The clerk's office will accept original complaints and the required civil cover

sheet by conventional filing, i.e., a hard copy sent by United States mail or delivered in person to the clerk's office. The complaint **must be accompanied by the required filing fee** before the filing is completed. The attorney submitting a civil cover sheet is responsible for its proper completion, including selection of the relevant nature of suit. If the clerk discovers an error on the civil cover sheet related to the nature of suit, the clerk may make the necessary correction or contact the filing attorney to correct the error.

2. **Summonses and subpoenas** shall not be filed in MEC prior to issuance. A party may either deliver in person or send to the clerk's office by United States mail or e-mail proposed summonses and subpoenas for issuance by the clerk.

The clerk's office shall issue a summons by conventional means. The party requesting the summons must complete the top portion of the summons form. The clerk's office will upload a copy of the summons into the system and return the original to counsel for service. The clerk will return the original summons via United States mail to counsel only if counsel supplies a stamped, self-addressed envelope.

After receipt of a subpoena from the requesting party, the clerk shall issue the subpoena by conventional means. The clerk shall then upload a copy of the issued subpoena into the system at which time an NEF will be created. The requesting party shall then print a copy of the issued subpoena for service on the appropriate person or entity as required by M.R.C.P. 45. Creation of an NEF for the issued subpoena does not constitute service of the subpoena. If requested by counsel, the clerk shall return the original subpoena as issued to the requesting party in accordance with M.R.C.P 45.

The return of service for both a summons and a subpoena shall be electronically filed by counsel and the original shall be maintained as set forth in Section 3.B.1.

3. **Criminal complaints,** informations, indictments, and those documents identified in 3.B.3. shall be filed conventionally on paper with the court. The clerk's office will upload these documents into the system and retain the originals of these documents after they have been uploaded into the system. All documents, including any attachments thereto, should be accompanied by an electronic PDF image. Instructions on how to save a document in PDF format are located on the MEC web site at *courts.ms.gov/mec/mec.html.*

4. **Other documents** which shall also be filed conventionally and not electronically unless specifically authorized by the court:

a. **Exhibits and other documents** which cannot or should not be filed electronically by conversion to a legible electronic form shall be filed conventionally. Whenever possible, counsel is responsible for converting filings to an electronic form. However, if that is not possible, counsel shall electronically file a PDF document titled **Notice of Conventional Filing** as a notation on the docket sheet that filings are being held in the clerk's office in paper. A sample **Notice of Conventional Filing** is attached as **Form 2.** If documents are filed in paper format, counsel must provide an original for the clerk's office, and submit a copy to the judge. A paper copy must be served on all parties in the case.

b. **Documents filed by pro se litigants** shall be filed conventionally unless said pro se party is an attorney in good standing and admitted to practice in the court which has implemented MEC. The clerk's office will upload these conventionally filed documents into the system.

c. **All requests for issuance of warrants and pen registers** shall be filed conventionally. These documents will not be made available electronically to the public.

d. **All original wills, vouchers, bonds, oaths, proofs of claims,** and other such documents as required by statute shall be filed conventionally and maintained by the clerk in accordance with the applicable statute. The clerk's office will upload these documents into the system.

e. **All documents in sealed cases** shall be filed conventionally as set forth in Section 5.A.

f. **All notices of appeal** shall be filed conventionally.

g. **Attorneys may apply to the assigned judge for permission to file documents conventionally.** Even if the assigned judge initially grants an attorney permission to file documents conventionally, the assigned judge may withdraw that permission at any time during the pendency of a case and require the attorney to file documents electronically using the system.

h. **Any judge may deviate from these procedures in specific cases,** without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy, and inexpensive determination of matters pending before the Court.

B. *Service of Conventional Filings.* Pleadings or other documents which are filed conventionally rather than electronically shall be served in the manner provided for in the Mississippi Rules of Civil Procedure, except as otherwise provided by order of the court.

C. *Return of Original Documents.* A filer may request that an original document, other than an Order or Judgment of the court, be returned after it has been scanned and uploaded by the clerk, provided the clerk is not required to maintain the original document. The filer shall request return of the original in writing to the clerk's office at the time the document is submitted for scanning and filing. Any such request shall be accompanied by a self-addressed, postage-paid envelope. If a document is submitted without a request for return and a self-addressed, postage-paid envelope, the clerk's office will discard the document after it is scanned and uploaded to the system. No standing authorizations for the return of all original documents filed by an attorney, office or party will be allowed. Any original document returned to the filer shall be maintained in the same manner as those documents provided for in Section 3.B.

Rule 7. Public Access to the System.

A. *Public Remote Access.* **Civil and Criminal cases:** Public remote access to the system for viewing purposes is limited to subscribers to PAMEC. PAMEC users may access the system at the MEC website at *courts.ms.gov/*

mec/mec.html. Unless otherwise limited by these procedures or order of the court, such access to the system through the Internet site will allow retrieval of the docket sheet and documents. Access to the system will be on a "read only" basis unless a user has an MEC filing level account.

B. *Public Access at the Courthouse and/or Clerk's Office.* Unless otherwise limited by these procedures or order of the court, the public will have free electronic access for viewing of civil and criminal documents filed in the system in the office of the clerk during regular business hours. A copy fee for reproduction of documents is required in accordance with §§ 25-7-9 and 25-7-13.

Rule 8. Technical Failures.

A. *The Court's System.* The AOC shall deem the public website for MEC to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day which were not filed due solely to such technical failures shall become due the next business day.

Questions about the system failure may be directed to the Help Line.

When unable to file a document in a timely manner due to a failure of MEC, a document **may** be filed conventionally, and the filer shall explain the conventional filing by attaching a **Declaration of Technical Difficulties,** attached hereto as **Form 3.**

B. *The Attorney's System.* If the attorney is unable to file a document in a timely manner due to technical difficulties in the user's system (e.g., phone line problems, problems with the filer's Internet Service Provider (ISP), or hardware or software problems), the attorney should file the document conventionally and notify the court of the inability to electronically file. Such notification may be made by attaching a Declaration of Technical Difficulties, wherein he or she explains the inability to file electronically.

Rule 9. Privacy.

A. *Obligation to Protect Sensitive and Private Information.* To achieve the goal of promoting electronic access to case files while still protecting personal privacy and addressing concerns created by Internet access to court documents, counsel shall refrain from including, or shall partially redact where inclusion is necessary and relevant to the case, the following personal data identifiers from all pleadings and other papers filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court or except where otherwise specifically required by rule or statute:

1. **Social Security numbers** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

2. **Names of minor children** If the involvement of a minor child must be mentioned, only the initials of that child should be used.

3. **Dates of birth** If an individual's date of birth must be included in a pleading, only the year should be used.

4. **Financial account numbers** If financial account numbers are relevant, only the last four digits of these numbers should be used.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review pleadings for compliance with this procedure. Attorneys are also advised to exercise caution when filing documents that contain the following:

1) personal identifying number, such as driver's license number;
2) medical records, treatment and diagnosis;
3) employment history;
4) individual financial information; and,
5) proprietary or trade secret information.

Attorneys are strongly urged to share this notice with all clients so that an informed decision may be made about the inclusion of certain materials in court documents.

Counsel and the parties are cautioned that failure to redact personal identifiers and/or the inclusion of irrelevant personal information in a pleading or exhibit filed electronically with the court may subject counsel to the disciplinary and remedial powers of the court, including sanctions pursuant to M.R.C.P. 11.

B. *Exemptions From the Redaction Requirement.* The redaction requirement shall not apply to the following:

1. The record of an administrative or agency proceeding.
2. The record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed.
3. Documents filed under seal.
4. Documents filed as Restricted Access if the private information is necessary and relevant to the case.

C. *Filing Documents With Sensitive and Private Information.* A party wishing to file a document containing the personal data identifiers listed above may do so in the following manner:

1. **File an unredacted version** of the document under seal, or
2. **File a reference list under seal** The reference list shall contain the complete personal data identifier(s) used in its (their) place in the filing.

All references to the redacted identifiers in the case included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended without leave of court.

The unredacted version of the document or the reference list shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.

D. *Waiver of Protection of Personal Data Identifiers.* A party waives his or her right to the protection of Section 9 by filing documents that include his or her own personal data identifiers without redaction.

Rule 10. Transcripts.

In cases on an appeal, transcripts of proceedings and documentary exhibits proffered or admitted into evidence will be electronically filed and remotely available to the public through PAMEC.

APPENDIX I. FORMS

Form 1.

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-MEC participants:

This the ____ day of ____________________, 20____ .

/s/[Name of Password Registrant]
Name of Password Registrant

Form 2.

IN THE ____________ COURT OF ____________ COUNTY, MISSISSIPPI

____________________ **Plaintiff(s)**

vs. **Case No.** ______________

____________________ **Defendant(s)**

NOTICE OF CONVENTIONAL FILING

________________________ is in paper form only and is being maintained in the case file in the Clerk's office. This document has not been filed electronically because [examples: the document or thing cannot be converted to an electronic format, the electronic file size of the document exceeds 2 megabytes, the document or thing is filed under seal, or the party is excused from filing this document or thing by court order.]

If appropriate, the document or thing has been manually served on all parties.

Date: ____________________

/s/[Name of Password Registrant]
Name of Password Registrant
Address
City, State, Zip Code
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
E-mail: XXX@XXX.XXX

Form 3.

IN THE ____________ COURT OF ____________ COUNTY, MISSISSIPPI

____________________ **Plaintiff(s)**

vs. **Case No.** ________________

____________________ **Defendant(s)**

DECLARATION OF TECHNICAL DIFFICULTIES

Please take notice that ____________________ was unable to file ____________________ in a timely manner due to technical difficulties. The deadline for filing the ____________________ was ____________________. The reason(s) that I was unable to file the ____________________ in a timely manner and the good faith efforts I made prior to the filing deadline to both file in a timely manner and to inform the court and the other parties that I could not do so are set forth below.

[Statement of reasons and good faith efforts to file and to inform]

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/[Name of Password Registrant]
Name of Password Registrant
Address
City, State, Zip Code
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
E-mail: XXX@XXX.XXX

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Electronic Courts

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UNIFORM RULES OF YOUTH COURT PRACTICE

The Uniform Rules of Youth Court Practice were adopted effective January 8, 2009, and amended effective December 1, 2016

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Rule 1. Title.

These rules shall be known as the Uniform Rules of Youth Court Practice and may be cited as U.R.Y.C.P.: e.g., U.R.Y.C.P. 1. (Adopted effective January 8, 2009.)

Rule 2. Scope of rules.

(a) *Proceedings subject to these rules.* The following proceedings are subject to these rules:

(1) any youth court proceeding;

(2) any chancery court proceeding when hearing, pursuant to Section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action;

(3) any proceeding conducted by a referee appointed pursuant to Section 43-21-111 of the Mississippi Code;

(4) any proceeding conducted by a designee appointed pursuant to the Mississippi Youth Court Law when acting in a judicial capacity.

(b) *Commencement of proceedings.* Proceedings commence when a report or complaint of a child within the jurisdiction of the youth court requires an action by the youth court or by the chancery court or by a referee appointed pursuant to Section 43-21-111 of the Mississippi Code or by a designee appointed pursuant to the Mississippi Youth Court Law when acting in a judicial capacity.

(c) *All orders of the court to be in substantial compliance with these rules.* Courts conducting any proceedings subject to these rules shall utilize the Mississippi Youth Court Information Delivery System (MYCIDS) pursuant to sections 9-21-9 and 43-21-351 of the Mississippi Code. (Adopted effective January 8, 2009; amended effective December 1, 2016.)

COMMENT

Rule 2(a)(1). — The Mississippi Youth Court Law provides for the creation of youth courts throughout the state. See Miss. Code Ann. § 43-21-107 (2008); see also In re T.L.C., 566 So. 2d 691, 696 (Miss. 1990) ("In a sense our youth courts are neither superior, equal to, or inferior to other 'inferior' courts - they are special courts due to the special nature of their function.").

Rule 2(a)(2). — Chancery court may hear an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action when there has been no prior proceeding in youth court concerning that same child or, if there has been a prior proceeding in youth court concerning that same child the youth court has terminated its ;jurisdiction of that case pursuant to the Mississippi Youth Court Law. See Miss. Code Ann. § 99-11-65(4) (2008); B.A.D. v. Finnegan, 82 So. 3d 608, 613 (Miss. 2012) ("Because the youth court had terminated its jurisdiction, there was no chance of conflicting orders and the like, as expressed in [KMK v. S.L.M ex rel. J.H. 775 So.2d 115 (Miss.2000)]."). All proceedings on the abuse and neglect charge shall be conducted in accordance with these rules.

Rule 2(a)(4). — "Designee" means any person that the judge appoints to perform a duty which the Mississippi Youth Court Law requires to be done by the judge or the judge's designee. The judge may not appoint a person who is involved in law enforcement to be a designee. See Miss. Code Ann. § 43-21-105(c) (2008). A designee, when acting in a judicial capacity, is subject to these rules. See, e.g., Miss. Code Ann. §§ 43-21-301, 43-21-307, 43-21-311, and 43-21-451 (2008). Designees appointed by the youth court judge are subject to the Code of Judicial Conduct. See Miss. Code Ann. § 43-21-201(5) (2008).

(Amended effective December 1, 2016)

Rule 3. Construction of rules.

(a) These rules are intended to provide a just, reasonably prompt, and efficient determination of every action within the jurisdiction of the youth court.

(b) These rules shall not be construed to extend or limit the jurisdiction of the courts of Mississippi.

(c) These rules shall be interpreted and applied in keeping with the philosophy expressed in Section 43-21-103 of the Mississippi Code. (Adopted effective January 8, 2009.)

COMMENT

Rule 3(a). — Rule 3(a) limits the scope of these rules to every action within the jurisdiction of the youth court. Actions not within the jurisdiction of the youth court include:

(1) any offense, unless there is a transfer to youth court pursuant to Section 43-21-159 of the Mississippi Code, committed by a child 13 years or older which is:

(a) punishable under state or federal law by life imprisonment or death. See Miss. Code Ann. §§ 43-21-105(j), 43-21-151(a) (2008); Holly v. State, 671 So. 2d 32 (Miss. 1996); Winters v. State, 473 So. 2d 452 (Miss. 1985). Cf. Williams v. State, 459 So. 2d 777, 779 (Miss. 1984) (holding that once jurisdiction is acquired by the circuit court, it is not lost by accepting a plea to a lesser-included offense or conviction for a lesser-included offense);

(b) a felony and involves the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle. See Miss. Code Ann. § 43-21-151(b) (2008);

(c) committed on or after the child's eighteenth birthday. See Miss. Code Ann. § 43-21-151(2) (2008);

(d) committed on or after the child's seventeenth birthday where such would be a felony if committed by an adult. See Miss. Code Ann. § 43-21-151(2) (2008);

(e) committed after the circuit court has had original jurisdiction and the child was convicted by the circuit court. See Miss. Code Ann. § 43-21-157 (2008);

(f) transferred by the youth court to a criminal court. See Miss. Code Ann. § 43-21-157 (2008);

(g) a hunting or fishing violation, a state or federal traffic violation, a violation under the Mississippi Implied Consent Law, a violation of a municipal ordinance or county resolution, or a violation of Section 67-3-70 of the Mississippi Code. See Miss. Code Ann. § 43-21-159 (2008); White v. Walker, 950 F.2d 972 (5th Cir. 1991);

(2) adoption proceedings. See Miss. Code Ann. § 93-17-3 (2008); In re Beggiani, 519 So. 2d 1208 (Miss. 1988);

(3) paternity actions. See Miss. Code Ann. 93-9-15 (2008); Davis v. Washington, 453 So. 2d 712 (Miss. 1984);

(4) cases involving exclusively child support, contempt, and modification issues. See Dep't of Human Servs.v. Blount, 913 So. 2d 326 (Miss. Ct. App. 2005).

Rule 3(b). — This provision reaffirms that nothing in these rules shall be construed as extending or limiting the jurisdiction of any state court. Thus, any previous appellate rulings on jurisdictional matters are unaffected by these rules. See, e.g., Helmert v. Biffany, 842 So. 2d 1287 (Miss. 2003); K.M.K. v. S.L.M., 775 So. 2d 115 (Miss. 2000); Thomas v. Byars, 947 So. 2d 375 (Miss. Ct. App. 2007).

Rule 4. Definitions.

All words and phrases shall have the meaning ascribed in the Mississippi Youth Court Law or, if the context clearly requires otherwise, the appropriate sections of the Mississippi Code applicable to the particular issue before the court, provided such are not inconsistent with these rules. (Adopted effective January 8, 2009.)

COMMENT

Definitions of words and phrases for purposes of these Rules are as follows:

"Abused child" has the same meaning as in Section 43-21-105(m) of the Mississippi Code. See, e.g., In re A.R.,579 So. 2d 1269, 1270 (Miss. 1991) (dealing with corporal punishment in disciplining a child);

"Adjudication hearing" means a hearing to determine whether a child is a delinquent child, a child in need of supervision, an abused child or a neglected child;

"Child" has the same meaning as in Section 43-21-105(d) of the Mississippi Code;

"Child in need of special care" has the same meaning as in section 43-21-105(o) of the Mississippi Code;

"Child in need of supervision" has the same meaning as in Section 43-21-105(k) of the Mississippi Code;

"Child protection proceedings" means a proceeding concerning a child reported abused, neglected or dependent;

"Complaint" means a report of abuse or neglect pursuant to Section 43-21-353 of the Mississippi Code;

"Concurrent plan" means a permanency plan that runs concurrent with another permanency plan;

"Court" means any youth court created under the Mississippi Youth Court Law or any chancery court when hearing, pursuant to Section 93-11-65 of the Mississippi Code, a charge of abuse or neglect of a child that first arises in the course of a custody or maintenance action;

"Custodian" has the same meaning as in Section 43-21-105(g) of the Mississippi Code;

"Custody" has the same meaning as in Section 43-21-105(q) of the Mississippi Code;

"Delinquent act" has the same meaning as in Section 43-21-105(j) of the Mississippi Code;

"Delinquency proceeding" means a court proceeding concerning a child charged with a delinquent act;

"Delinquent child" has the same meaning as in Section 43-21-105(I) [Section 43-21-105(i)] of the Mississippi Code;

"Dependent child" has the same meaning as in Section 43-21-105(p) of the Mississippi Code;

"Designee" has the same meaning as in Section 43-21-105(c) of the Mississippi Code;

"Detention" has the same meaning as in Section 43-21-105(s) of the Mississippi Code;

"Disposition hearing" means a hearing to determine the appropriate disposition for an adjudicated child;

"Durable legal custody" has the same meaning as in Section 43-21-105(y) of the Mississippi Code;

"Educational neglect" means neglect in providing the child with an education as required by law;

"Guardian" has the same meaning as in Section 43-21-105(f) of the Mississippi Code;

"Legal custodian" has the same meaning as in Section 43-21-105(h) of the Mississippi Code;

"Legal custody" has the same meaning as in Section 43-21-105(r) of the Mississippi Code;

"Neglected child" has the same meaning as in Section 43-21-105(l) of the Mississippi Code;

"Out-of-home setting" has the same meaning as in Section 43-21-105(x) of the Mississippi Code;

"Parent" has the same meaning as in Section 43-21-105(e) of the Mississippi Code. Cf. 42 U.S.C. § 675(2) (2008) ("The term 'parents' means biological or adoptive parents or legal guardians, as determined by applicable State law.");

"Party" means the child, the child's parent(s), the child's guardian or custodian, and any other person whom the court deems necessary to designate a party;

"Permanency hearing" means a hearing conducted pursuant to Rule 29 of these rules;

"Permanency plan" means a judicial plan to achieve, in compliance with federal requirements, a permanent living arrangement for a child taken into protective custody;

"Permanency review hearing" means a hearing conducted pursuant to Rule 31 of these rules;

"Person responsible for care or support" has the same meaning as in Section 43-21-105(v) of the Mississippi Code;

"Placement" means placing the child in the care and custody of an appropriate person or organization;

"Records involving children" has the same meaning as in Section 43-21-105(u) of the Mississippi Code;

"Report" means a report to intake of a matter within the jurisdiction of the youth court;

"Residential child-caring agency" has the same meaning as in Section 43-15-103(p) of the Mississippi Code;

"Sexual abuse" has the same meaning as in Section 43-21-105(n) of the Mississippi Code;

"Shelter" has the same meaning as in Section 43-21-105(t) of the Mississippi Code;

"Social history" means a history of significant events and relationships throughout the child's life;

"Status offense" has the same meaning as in Section 43-21-105(z) of the Mississippi Code;

"Summons" means notice issued as required by these rules;

"Truant child" means a compulsory-school-age child who is in violation of Mississippi's Compulsory School Attendance Law for reasons of nonattendance or unlawful absences;

"Uniform Youth Court Case Identification and Docket Numbering System" means the system to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997);

"Uniform Youth Court Case Tracking System and Form" means the system to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the State of Mississippi. See Special Order No. 47 (Miss. Dec. 16, 1996);

"Volunteer trained layperson" means a qualified person appointed, pursuant to Section 43-21-121(7) of the Mississippi Code, to assist the child in addition to the appointment of a guardian ad litem;

"Youth" has the same meaning as in Section 43-21-105(d) of the Mississippi Code;

"Youth court" has the same meaning as in Section 43-21-105(a) of the Mississippi Code;

"Youth court clerk" means the clerk of the court exercising jurisdiction of the matter.

Words and phrases defined in the Mississippi Compulsory School Attendance Law, which may apply to youth court proceedings under Section 43-21-621 of the Mississippi Code, include: appropriate school official; compulsory-school-age child; custodian; guardian; nonpublic school; parent; school; school attendance officer; and school day. See Miss. Code Ann. § 37-13-91 (2008).

Rule 5. Confidentiality of records and proceedings.

(a) *Delinquency and child in need of supervision proceedings.*

(1) *Confidential records.* Records involving children, as defined under Section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law or as otherwise provided by law.

(2) *Disclosure of records involving children by court order.* The court may order the disclosure of records involving children pursuant to Section 43-21-

261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of Section 43-21-261(2) of the Mississippi Code.

(3) *Disclosure of records involving children not requiring a court order.* Certain records involving children may be disclosed without an order of the court pursuant to Sections 43-21-261(1) through (18) and 43-21-623 of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of Section 43-21-261(2) of the Mississippi Code.

(4) *Media and electronic media access to proceedings.* Media and electronic media coverage, as such terms are defined under Rule 2 of the Rules for Electronic and Photographic Coverage of Judicial Proceedings, in delinquency or child in need of supervision proceedings is strictly prohibited except upon findings of facts and conclusions of law by the court of extraordinary and compelling circumstances.

(b) *Child protection proceedings.*

(1) *Confidential records.* Records involving children, as defined under Section 43-21-105 of the Mississippi Code, shall not be disclosed except as authorized by Mississippi's Youth Court Law or as otherwise provided by law.

(2) *Disclosure of records involving children pursuant to a court order.* The court may order the disclosure of records involving children pursuant to Section 43-21-261(1) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of Section 43-21-261(2) of the Mississippi Code.

(3) *Disclosure of records involving children not requiring a court order.* Certain records involving children may be disclosed without an order of the court pursuant to Section 43-21-261(1) through (18) of the Mississippi Code. Any records so disclosed shall be subject to the confidentiality requirements of Section 43-21-261(2) of the Mississippi Code.

(4) *Media and electronic media access to proceedings.* Media or electronic media coverage, as such terms are defined under Rule 2 of the Rules for Electronic and Photographic Coverage of Judicial Proceedings, is strictly prohibited except upon findings of facts and conclusions of law by the court of extraordinary and compelling circumstances. (Adopted effective January 8, 2009.)

COMMENT

Rule 5(a)(1), -(b)(1). — Records involving children shall be kept confidential except as authorized by Mississippi's Youth Court Law or as otherwise provided by law. See Miss. Code Ann. § 43-21-259 (2008). This confidentiality requirement is conducive to the protective and rehabilitative purposes of the court. See, e.g., Smith v. Daily Mail Pub. Co.,443 U.S. 97, 107 (1979) (Rehnquist, J., concurring) ("The prohibition of publication of a juvenile's name is designed to protect the young person from the stigma of his misconduct and is rooted in the principle that a court concerned with juvenile affairs serves as a rehabilitative and protective agency of the State."). It is not, however, absolute. See Windham v. State, 800 So. 2d 1257, 1260 (Miss. Ct. App. 2001) ("[Section 43-21-261] itself provides that the confidentiality requirement may be overridden by a determination that disclosure would advance the child's best interests or the public safety.").

A court order for the disclosure of records involving children must specify the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Additionally, the order must be limited to those persons listed in Section 43-21-261(1)(a) through (g) of the Mississippi Code and must contain a finding that the particular disclosure is in the best interests of the child, the public safety or the functioning of the youth court. See Miss. Code Ann. § 43-21-261 (2008).

Rule 5(a)(3), -(b)(3). — Statutory provisions allowing for limited disclosure of records involving children restrict the persons to whom the records may be disclosed, the extent of the records which may be disclosed, and the purpose of the disclosure. See Miss. Code Ann. § 43-21-261(2) (2008); see also Miss. Code Ann. § 43-21-267 (2008) (providing sanctions for disclosing or encouraging the disclosure of any records involving children without proper authorization).

Rule 5(a)(4), -(b)(4). — Media and electronic media access to youth court proceedings is seldom consistent with the philosophy expressed in Section 43-21-103 of the Mississippi Code.

Rule 6. Subpoena duces tecum.

(a) *Procedures for issuing a subpoena duces tecum.* Every subpoena duces tecum for records involving children, as such records are defined under Section 43-21-105 of the Mississippi Code, and which originates from any issuing court shall be in compliance with the following procedures:

(1) the party shall make an application to the court specifying which records are sought;

(2) the court shall issue a subpoena duces tecum to the youth court for these records;

(3) the youth court, unless a hearing is conducted pursuant to Rule 6(b) of these rules, shall transfer copies of the records to the court;

(4) the court shall conduct an in camera inspection of the records, in accordance with the procedures set forth in *Pennsylvania v. Ritchie,* 480 U.S. 39 (1987), to determine which records should be disclosed to the party;

(5) the court shall, at all times, protect the confidentiality of the records to the extent required of the youth court under Mississippi's Youth Court Law.

(b) *Hearing on access to confidential files.* The youth court may require a hearing to determine whether the court or parties have a legitimate interest to be allowed access to the confidential files. In determining whether a person has a legitimate interest, the youth court shall consider the nature of the proceedings, the welfare and safety of the public, and the interest of the child.
(Adopted effective January 8, 2009.)

COMMENT

Rule 6. — The child's right of confidentiality of youth records is a qualified privilege, not an absolute one. See Daniels v. Wal-Mart Stores, Inc., 634 So.2d 88, 93 (Miss. 1993). Mississippi has adopted the procedures advanced in Ritchie when there is a request for disclosure of confidential youth court records. See In re J.E., 726 So. 2d 547, 553 (Miss. 1998). These procedures require the trial judge to: (1) conduct an in camera review of the requested records and (2) release any information contained therein material to the fairness of the trial. Such is an ongoing duty. See Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

Rule 7. Federal laws and regulations.

(a) *Federal laws requiring compliance.* These rules require compliance with federal laws which impact funding for cases within the jurisdiction of the youth court, including:

(1) Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974) (codified as amended in scattered sections of 18 and 42 U.S.C.);

(2) Juvenile Justice and Delinquency Amendments of 1988, Pub. L. No. 100-690, 102 Stat. 4434 (1988) (codified as amended in scattered sections of 42 U.S.C.);

(3) Juvenile Justice and Delinquency Prevention Act of 2002, Pub. L. No. 107-273, 116 Stat. 1869 (2002) (codified as amended in scattered sections of 42 U.S.C.);

(4) Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended in scattered sections of 42 U.S.C.);

(5) Title IV-E of the Social Security Act. 42 U.S.C. §§ 670-79(b) (2008).

(b) *Federal regulations requiring compliance.* These rules require compliance with federal regulations which impact funding for cases within the jurisdiction of the youth court, including:

(1) 28 C.F.R. § 31.303 (2008);

(2) 28 C.F.R. § 31.304 (2008);

(3) 45 C.F.R. §§ 1355,-1356 (2008). (Adopted effective January 8, 2009.)

COMMENT

Rule 7. — These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice.

Rule 7(a)(1)-(3). — The purposes of the Juvenile Justice and Delinquency Prevention Act are to: "(1) to support State and local programs that prevent juvenile involvement in delinquent behavior; (2) to assist State and local governments in promoting public safety by encouraging accountability for acts of juvenile delinquency; (3) to assist State and local governments in addressing juvenile crime through the provision of technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency." 42 U.S.C. § 5602 (2008).

Rule 7(a)(4). — Sections of Title IV-E of the Social Security Act affected by the Adoption and Safe Families Act include: 42 U.S.C. §§ 671, -672, -673, -673b; -674, -675, -677, -678, -679b (2008).

Rule 7(a)(5). — Title IV-E of the Social Security Act authorizes payments for foster care and transitional independent living programs for children pursuant to the eligibility criteria contained therein. See 42 U.S.C. § 670 (2008).

Rule 7(a)(6). — Child custody proceedings involving an Indian child shall be in compliance with the Indian Child Welfare Act, which is in keeping with the policy of the United States of America "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." 25 U.S.C. § 1902 (2011).

Indian tribe jurisdiction over Indian child custody proceedings. — 25 U.S.C. § 1911 provides:

(a) Exclusive jurisdiction — An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) Transfer of proceedings; declination by tribal court — In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) State court proceedings; intervention — In any State court proceeding for the foster care placement of or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes — The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Child custody proceeding under the Indian Child Welfare Act defined. — 25 U.S.C. § 1911(1) provides:

(1) "child custody proceeding" shall mean and include — (i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(ii) "termination of parental rights" which shall mean any action resulting in the termination of the parent-child relationship;

(iii) "preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(iv) "adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

Indian child under the Indian Child Welfare Act defined. — 25 U.S.C. § 1911(4) provides:

(4) "Indian child" means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe;

Indian tribe under the Indian Child Welfare Act defined. — 25 U.S.C. § 1911(8) provides:

(8) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of Title 43;

Foster care placement or termination of parental rights proceedings involving an Indian child. — 25 U.S.C. § 1912 provides:

Notice; time for commencement of proceedings; additional time for preparation — (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) Appointment of counsel — In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to section 13 of this title.

(c) Examination of reports or other documents — Each party to a foster care placement or termination of parental rights proceeding under State law involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(d) Remedial services and rehabilitative programs; preventive measures — Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(e) Foster care placement orders; evidence; determination of damage to child — No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(f) Parental rights termination orders; evidence; determination of damage to child — No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Parental rights under the Indian Child Welfare Act. — 25 U.S.C. § 1913 provides in part:

(a) Consent; record; certification matters; invalid consents — Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent — Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody — In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

Finalization of adoption requires compliance with the Indian Child Welfare Act. — Miss. Code Ann. § 93-17-3(8) provides:

No person may be adopted unless the provisions of the Indian Child Welfare Act §ICWA) have been complied with, it applicable. When applicable, proof of compliance shall be included in the court adoption file prior to finalization of the adoption. It not applicable, a written statement or paragraph in the petition for adoption shall be included in the adoption petition stating that the provisions of ICWA do not apply before finalization.

(Amended effective December 1, 2016)

Rule 8. Intake.

(a) *Delinquency and child in need of supervision proceedings.* Whenever an intake screening process has been conducted pursuant to Section 43-21-357(1) of the Mississippi Code and it appears that the child is a delinquent child or a child in need of supervision, the youth court intake unit shall recommend to the court:

(1) that the youth court take no action;

(2) that an informal adjustment process be made;

(3) that the child be warned or counseled informally;

(4) that the child be referred to the youth court drug court: or

(5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The youth court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(a) of these rules. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

(b) *Child protection proceedings.* Whenever an intake screening process has been conducted pursuant to Section 43-21-357(1) of the Mississippi Code and it appears that the child is an abused or neglected child, the youth court intake unit shall recommend to the court:

(1) that the youth court take no action;

(2) that an informal adjustment process be made;

(3) that the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, monitor the child, family and other children in the same environment;

(4) that the parents be warned or counseled informally; or

(5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The youth court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(b) of these rules. If the intake screening process discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

(c) *Chancery court proceedings.* When a chancery court orders the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, to investigate a charge of abuse and neglect that first arises in the course of a custody or maintenance action, the assigned caseworker shall conduct an intake screening process in the same manner as required in child protection proceedings and thereupon recommend to the court:

(1) that the chancery court take no action;

(2) that an informal adjustment process be made;

(3) that the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, monitor the child, family and other children in the same environment;

(4) that the parents be warned or counseled informally; or

(5) that the matter be referred to the youth court prosecutor for consideration of initiating formal proceedings.

The chancery court shall then, without a hearing, order the appropriate action to be taken in accordance with Rule 9(b) of these rules. If the intake screening process discloses that a child needs emergency medical treatment, the chancellor may order the necessary treatment.

(d) *Appointment of intake unit.* In every youth court division the judge shall appoint one or more persons to function as an intake unit pursuant to Sections 43-21-115 and 43-21-123 of the Mississippi Code. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

Rule 8(a). — When the intake unit receives a report of a delinquent child or a child in need of supervision it may request, or the youth court may order, the Department of Human Services, Division of Youth Services, or other appointed intake unit, to make an investigation concerning the child, and any other children in the same environment, and present the findings to the intake unit. If it appears from the intake screening process that the child is a delinquent child or a child in need a supervision, the intake unit must make a recommendation to the youth court pursuant to Rule 8(a) of this rule — even if the recommendation is that no action be taken. The youth court shall then, without a hearing, order the appropriate action to be taken. This procedure assures that the youth court is made aware of every valid report received by the intake unit. The youth court, and not the intake unit, determines how each case proceeds. See Miss. Code Ann. § 43-21-357(2).

Rule 8(b). — When the intake unit receives a report of an abused or neglected child it must immediately forward the complaint to the Department of Human Services, Division of Family and Children's Services, or other appointed intake unit, to make an investigation concerning the child, and any other children in the same environment, and promptly present the findings to the intake unit. If it appears from the intake screening process that the child is an abused or neglected child, the intake unit must make a recommendation to the youth court pursuant to Rule 8(b) of this rule — even if the recommendation is that no action be taken. The youth shall then, without a hearing, order the appropriate action to be taken. This procedure assures that the youth court is made aware of every valid report received by the intake unit. The youth court, and not the intake unit, determines how each case proceeds. See Miss. Code Ann. § 43-21-357(2).

Rule 8(c). — Rule 8(c) is to assure, consistent with Rule 2 of these rules, that chancery court procedures for investigating charges of abuse or neglect are consistent with those applicable to youth court. When a chancellor orders the investigation of abuse or neglect, the Department of Human Services, Division of Family and Children's Services follows normal intake procedures. Upon receiving the intake recommendation, the chancery court must decide whether to hear the case or transfer it to youth court. If the chancery court decides to hear the case, then it must follow all procedures required of a youth court under these rules.

Uniform Youth Court Case Identification and Docket Numbering System. — The Mississippi Supreme Court has adopted a Uniform Youth Court Case Identification and Docket Numbering System to be implemented by intake in assigning an identification and docket number for every matter coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

Uniform Youth Court Case Tracking System and Form. — The Mississippi Supreme Court has adopted a Uniform Youth Court Case Tracking System and Form to be implemented by intake as a data collection procedure for every matter coming before the youth courts of the state of Mississippi. See Special Order No. 47 (Miss. Dec. 16, 1996).

(Amended effective December 1, 2016)

Rule 9. Court orders upon intake recommendations.

(a) *Delinquency and child in need of supervision proceedings.*

(1) *No action to be taken.* The court may order that no action be taken if such is in the best interest of the child and in the interest of justice.

(2) *Informal adjustment process to be made.* The court may order the Department of Human Services, Division of Youth Services, or other appointed intake unit, to conduct an informal adjustment process pursuant to Sections 43-21-401 through 43-21-407 of the Mississippi Code. No informal adjustment process may commence except upon an order of the court. Every informal adjustment process shall include:

(i) the giving of counsel and advice to the child and the child's parent, guardian, or custodian;

(ii) referrals to public and private agencies which may provide benefits, guidance or services to the child or the child's parent, guardian or custodian; and

(iii) temporary placement of the child or supervision by the youth court counselor with the consent of the child and the child's parent, guardian or custodian, subject to review by the court.

If the child and the child's parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under Section 43-21-407 of the Mississippi Code. If authorized by the court, the informal adjustment process may be commenced after the filing of a petition.

(3) *The child be warned or counseled informally.* The court may order the child to be warned or counseled informally in accordance with the policies of the Department of Human Services, Division of Youth Services.

(4) *The child be referred to the youth court drug court.* The court may order the child to be referred to the youth court drug court pursuant to the guidelines developed by the State Drug Court Advisory Committee.

(5) *Referral to the youth court prosecutor for consideration of initiating formal proceedings.* The court may refer the matter to the youth court prosecutor for consideration of initiating formal proceedings, whereupon the youth court prosecutor must:

(i) file a petition;

(ii) make a written request for the court to handle the matter informally, which may include an appropriate recommendation to the court for consideration: or

(iii) make a written request that the court dismiss the proceedings

(b) *Child protection proceedings.*

(1) *No action to be taken.* The court may order that no action be taken if such is in the best interest of the child and in the interest of justice.

(2) *Informal adjustment process to be made.* The court may order the Department of Human Services, Division of Family and Children's Services to conduct an informal adjustment process pursuant to Sections 43-21-401 through 43-21-407 of the Mississippi Code. No informal adjustment process may commence except upon an order of the court. Every informal adjustment process shall include:

(i) the giving of counsel and advice to the child and the child's parent, guardian, or custodian;

(ii) referrals to public and private agencies which may provide benefits, guidance or services to the child or the child's parent, guardian or custodian; and

(iii) temporary placement of the child or supervision by the Department of Human Services, Division of Family and Children's Services with the consent of the child and the child's parent, guardian or custodian, subject to review by the court.

If the child and the child's parent, guardian or custodian agree to participate in an informal adjustment process, the defense of a failure to provide a speedy trial is waived and a petition may be filed if the informal adjustment process is unsuccessfully terminated under Section 43-21-407 of the Mississippi Code. If authorized by the court, an informal adjustment process may be commenced after the filing of a petition.

(3) *Monitor the child, family and other children in the same environment.* The court may order the department of Human Services, Division of Family and Children's Services to monitor the child, family and other children in the same environment.

(4) *The parent(s) to be warned or counseled informally.* The court may order the parent(s) to be warned or counseled informally in accordance with the policies of the Department of Human Services, Division of Family and Children's Services.

(5) *Referral to the youth court prosecutor for consideration of initiating formal proceedings.* The court may refer the matter to the youth court

prosecutor for consideration of initiating formal proceedings, whereupon the youth court prosecutor must:

(i) file a petition;

(ii) make a written request for the court to handle the matter informally, which may include an appropriate recommendation to the court for consideration: or

(iii) make a written request that the court dismiss the proceedings. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

An instance where an informal adjustment process might be appropriate in child protection proceedings, even after the filing of the petition, is where the parent is temporarily unable to care for the child (e.g., inpatient drug and alcohol treatment), but a suitable relative is willing to do so for the short-term period. In any event, an informal adjustment process does not circumvent the authority of the Department of Human Services to remove the child from the home or any placement if there is a reasonable concern for the child's safety or welfare.

Rule 9(a)(5). — When the intake unit makes a recommendation that a petition be filed the court must decide whether to proceed informally or to refer the matter to the youth court prosecutor for the consideration of initiating formal proceedings. It the court refers the matter to the youth court prosecutor for the initiation of formal proceedings and the youth court prosecutor decides to file a petition in accordance with Rule 20 of these rules, then the child shall be afforded the procedural due protections required by law for formal proceedings. See Application of Gault, 387 US. 1, 30 (1967) (holding that youth court adjudicatory hearings "must measure up to the essentials of due process and fair treatment"): Patterson v. Hopkins, 350 F Supp. 676, 683 (N.D. Miss. 1972) "([T]he Due Process Clause does require application during the adjudicatory hearing of 'the essentials of due process and fair treatment.' ... [T]he constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault-notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self incrimination.") (internal quotation marks omitted).

Rule 9(b)(2). — An instance where an informal adjustment process might be appropriate in child protection proceedings, even after the filing of the petition, is where the parent is temporarily unable to care for the child (e.g., inpatient drug and alcohol treatment), but a suitable relative is willing to do so for the short-term period. In any event, an informal adjustment process does not circumvent the authority of the Department of Human Services to remove the child from the home or any placement if there is a reasonable concern for the child's safety or welfare.

Rule (9)(b)(2)(iii). — The Department of Human Services, Division of Family and Children's Services should conduct a background check and home study prior to making a temporary placement of a child within its custody.

(Amended effective December 1, 2016.)

Rule 10. Valid court order.

(a) *Valid court order for a child in need of supervision who has committed a status offense.*

A child in need of supervision who has committed a status offense shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial appearance, with the exception of a child who is an out-of-state runaway pending return to the child's home state, unless:

(1) the court has issued a valid court order which contains:

(i) an advisement of rights, including:

the right to have the petition served on the child in a reasonable time before the hearing;

the right to a hearing on the petition before the court;

the right to an explanation of the nature and consequences of the proceedings;

the right to remain silent;

the right to legal counsel and, if indigent, the right to appointed legal counsel;

the right to present and confront witnesses;

the right to a transcript of the proceedings; and

the right to appeal; and

(ii) a warning that a violation of the valid court order is contempt of court and may result in the child being ordered to a secure juvenile detention facility;

(2) reasonable oral or written notice of the time, place and purpose of the contempt hearing for the violation of the valid court order is given to the child, the child's parent, guardian or custodian, the child's guardian ad litem, if any, and the child's counsel.

Notice shall be satisfied if the following notice is placed in capital letters at the bottom of the valid court order and is acknowledged on the record by the child, the child's parent, guardian or custodian, the child's guardian ad litem, if any, and the child's counsel:

A VIOLATION OF THIS VALID COURT ORDER IS CONTEMPT OF COURT AND MAY RESULT IN YOU BEING ORDERED TO SECURE JUVENILE DETENTION. IF A REPORT OR COMPLAINT OF A VIOLATION OF THIS VALID COURT ORDER IS RECEIVED BY THIS COURT, YOU ARE HEREBY COMMANDED TO APPEAR BEFORE THIS COURT WITHIN 72 HOURS OF YOUR ORIGINAL SECURE JUVENILE DETENTION PERTAINING TO THE VIOLATION OF THE VALID COURT ORDER, EXCLUDING SATURDAYS, SUNDAYS, AND STATUTORY STATE HOLIDAYS FOR A CONTEMPT HEARING ON THE VIOLATION OF THE VALID COURT ORDER. YOU HAVE A RIGHT TO BE REPRESENTED BY AN ATTORNEY. YOU ARE REQUESTED TO IMMEDIATELY NOTIFY THIS COURT OF THE NAME OF YOUR ATTORNEY. IF INDIGENT, YOU HAVE THE RIGHT TO HAVE AN ATTORNEY APPOINTED FREE OF CHARGE, AND YOU SHOULD IMMEDIATELY APPLY TO THIS COURT FOR SUCH APPOINTED COUNSEL. YOU HAVE A RIGHT TO SUBPOENA WITNESSES IN YOUR BEHALF. THIS NOTICE SHALL BE LEGAL AND SUFFICIENT NOTICE TO YOU, YOUR PARENT(S), GUARDIAN, OR CUSTODIAN, YOUR GUARDIAN AD LITEM, IF ANY, AND YOUR COUNSEL WITH RESPECT TO SUCH HEARING;

but in any event, if the child's parent, guardian or custodian cannot be found, the court may hold the hearing in the absence of the child's parent, guardian or custodian;

(3) the court conducts a probable cause hearing within twenty-four (24) hours of the child being ordered to secure juvenile detention, excluding Saturdays, Sundays, and statutory state holidays, for the violation of the valid court order;

(4) the court conducts an adjudication hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays; and

(5) the court conducts a separate and distinct disposition hearing within seventy-two (72) hours of the original secure juvenile detention for the violation of the valid court order, excluding Saturdays, Sundays, and statutory state holidays, and in which:

(i) the Department of Human Services, Division of Youth Services submits to the court a written report that contains: a review of the child's behavior; a determination of the reasons for that behavior; and a determination that all other dispositions other than secure juvenile detention are inappropriate;

(ii) the court makes the determination, based upon the written report and other evidence before the court,that all other dispositions other than secure juvenile detention are inappropriate; and

(iii) the court specifies in the disposition order: the number of days the child is to be held in secure juvenile detention, that the secure juvenile detention complies with federal and state laws; and that the court may, within its discretion, suspend the secure juvenile detention should a less restrictive alternative become available.

(b) *Valid Court Order Exception Form.* If a child is taken into custody upon an order of the court for a violation of a valid court order, and such custody is prior to the child being adjudicated in contempt for the violation, the court shall complete and sign a Valid Court Order Exception Form and send a copy thereof to the secure juvenile detention facility. (Adopted effective January 8, 2009.)

COMMENT

Rule 10. — This rule comports with the statutory procedures. See Miss. Code Ann. § 43-21-301(6) (2008). It also satisfies the federal laws and regulations in holding status offenders in secure juvenile detention. Contempt for a violation of a valid court order requires proof beyond a reasonable doubt.

"Valid court order", in the context of Rule 10 of these rules, is a distinct term that identifies any order holding a status offender in secure juvenile detention. Its usage originated when Congress, in response to the problem of status offenders disobeying court orders, amended the Juvenile Justice Delinquency Prevention Act of 1974 by passing a "valid court order exception." See Claire Shubik & Jessica Kendall, Rethinking Juvenile Status offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act, 45 Fam. Ct. Rev. 384, 388-89 (2007) (discussing the rationale for the passage of the "valid court order exception"). Federal agencies closely scrutinize all valid court orders to ensure compliance with the statutory exception.

Four core protections requiring State compliance. — The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

-Deinstitutionalization of status offenders (DSO).

-Separation of juveniles from adults in institutions (separation).

-Removal of juveniles from adult jails and lockups (jail removal).

-Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 2002 1 (SEPTEMBER 2003).

Rule 10(a)(2) — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-309(2), -503 (2008).

Rule 10(b). — Within twenty-four (24) hours of the time the child is taken into custody for a violation of a valid court order, if such is prior to the child being adjudicated in contempt for the violation, the appropriate public agency must: be notified that the child is being held in custody; interview the child in person; and submit an assessment on the needs of the child to the court that issued the order. See 28 C.F.R. § 31.303 (2008).

The Valid Court Order Assessment Report. — The Valid Court Order Assessment Report requires the appropriate public agency worker to:

state the name of the juvenile facility in which the child was placed;

state the date of the placement;

state the name of the person conducting the interview;

describe the circumstances, events, and/or behaviors relevant to the incident;

describe the immediate needs of the child;

describe the most appropriate placement alternatives available for the child pending a disposition on the alleged violation; and

sign and date the assessment report.

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to valid court orders include:

Valid court order means. — 42 U.S.C. § 5603 (2008) provides in part:

(16) the term "valid court order" means a court order given by a juvenile court judge to a juvenile —

(A) who was brought before the court and made subject to such order; and

(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States; . . .

Status offender means. — 28 C.F.R. § 31.304 (2008) provides in part:

(h) Status offender. A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

Secure detention facility means. — 42 U.S.C. § 5603 (2008) provides in part:

(12) the term "secure detention facility" means any public or private residential facility which —

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or of any other individual accused of having committed a criminal offense; . . .

Status offenders who commit violation of valid court order excluded from prohibition of secure detention. — 42 U.S.C. 5633 (2008) provides in part:

[A State plan to receive formula grants] . . .

(11) shall, in accordance with rules issued by the Administrator, provide that —

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding — . . .

(ii) juveniles who are charged with or who have committed a violation of a valid court order; . . . shall not be placed in secure detention facilities or secure correctional facilities; . . .

Monitoring of detention facilities. — 28 C.F.R. § 31.303 (2008) provides in part:

(3) Valid court order. For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile. Prior to issuance of the order, the juvenile must have received the full due process rights guaranteed by the Constitution of the United States.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to the juvenile's attorney and/or legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juveniles may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile alleged or found in a violation hearing to have violated a Valid Court Order may be held only in a secure juvenile detention or correctional facility, and not in an adult jail or lockup.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes the placement of a status offender in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (f)(3)(i), (ii) and (iii) of this section) and the applicable due process rights (paragraph (f)(3)(v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must obtain and review a written report that: reviews the behavior of the juvenile and the circumstances under which the juvenile was brought before the court and made subject to such order; determines the reasons for the juvenile's behavior; and determines whether all dispositions other than secure confinement have been exhausted or are clearly inappropriate. This report must be prepared and submitted by an appropriate public agency (other than a court or law enforcement agency).

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 11. Temporary custody orders/custody orders.

(a) *Delinquency and child in need of supervision proceedings.*

(1) *When a custody order may be issued.* The youth court judge or referee, a chancellor sitting as a youth court judge, or the judge's designee, and no other judge of another court, may issue an order to take into temporary custody or custody a child within the original exclusive jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the temporary custody order or custody order recites that:

(i) that there is probable cause the child is within the jurisdiction of the youth court; and

(ii) that there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301 of the Mississippi Code.

(2) *Order requirements.* The temporary custody order or custody order may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays. The written order shall:

(i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;

(ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;

(iii) state that the child be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;

(iv) state the date issued and the youth court by which the order is issued; and

(v) be signed by the youth court judge or referee, or the judge's designee, with the title of his/her office.

(3) *Custody requirements.* The court shall comply with the following custodial requirements:

(i) No child who has been accused or adjudicated of any status offense shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure juvenile detention for violating a valid court order as set forth in Rule 10 of these rules and pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.

(ii) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.

(iii) The custody of any child taken into custody shall comply with the detention requirements of Section 43- 21-315 of the Mississippi Code.

(4) *Additional orders.* After a child is ordered into custody, the court may:

(i) arrange for the custody of the child with any private institution or agency caring for children;

(ii) may commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq.; or

(iii) may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child.

(b) *Child protection proceedings.*

(1) *When a custody order may be issued.* The youth court judge or referee, or the judge's designee, or a chancellor when hearing, pursuant to Section 93-11-65 of the Mississippi Code, an allegation of abuse or neglect of a child that first arises in the course of a custody or maintenance action, and no other judge of another court, may issue an order to take into custody a child within the exclusive original jurisdiction of the youth court, for a period not to exceed forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays, if the court finds and the custody order recites that:

(i) that there is probable cause the child is within the jurisdiction of the court; and

(ii) that there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody. Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301 of the Mississippi Code.

(2) *Order requirements.* The custody order may be written or oral, but, if oral, reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays. The written order shall:

(i) specify the name and address of the child, or, if unknown, designate the child by any name or description by which the same can be identified with reasonable certainty;

(ii) specify the age of the child, or, if unknown, that the child is believed to be of an age subject to the jurisdiction of the youth court;

(iii) state that the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child, that the placement of the child in foster care or relative care is in the best interest of the child;

(iv) state and specify, unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c) of the Mississippi Code, that:

(a) reasonable efforts have been made to maintain the child within the child's own home, but that the circumstances warrant the child's removal and there is no reasonable alternative to custody; or

(b) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, there is no reasonable alternative to custody, and reasonable efforts be made towards the reunification of the child with the child's family;

(v) state that the child be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;

(vi) state the date issued and the youth court by which the order is issued; and

(vii) be signed by the youth court judge or referee, the judge's designee, or chancellor, with the title of his/her office.

No child in the custody of the Department of Human Services, Division of Family and Children's Services shall be placed in a foster care setting that has not been licensed or approved as meeting the Department of Human Services, Division of Family and Children's Services licensure standards, except that a child may be placed with a relative if there is: (1) an emergency process, as developed by the Department of Human Services, Division of Family and Children's Services in conjunction with the Council on Accreditation, that enables, after an initial screening of the relative's home in accordance with Mississippi's Settlement Agreement and Reform Plan, the child to be placed with the relative as soon as the child enters placement, and (2) a full licensing process, which shall be completed no later than ninety (90) calendar days after the child has entered placement. The Department of Human Services, Division of Family and Children's Services may waive non-safety licensing requirements for relative foster placements in individual cases pursuant to federal regulations.

(3) *Reasonable efforts, judicial determination required.* Within sixty (60) days from the date of the child being removed from the child's home pursuant to the court's temporary custody order or custody order, the court shall conduct a hearing to determine whether the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home or, pursuant to Section 43-21-603(7) of the Mississippi Code, whether reasonable efforts were not required to prevent the removal.

(i) If the court determines that the Department of Human Services, Division of Family and Children's Services has made reasonable efforts to prevent the removal of the child from the child's home but that removal remains in the best interest of the child, the court shall adopt a permanency plan and a concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(ii) If the court determines that, pursuant to Section 43-21-603(7) of the Mississippi Code, reasonable efforts were not required to prevent the removal of the child from the child's home, it shall adopt a permanency plan and concurrent plan and order that the Department of Human Services, Division of Family and Children's Services make reasonable efforts to timely finalize the adopted permanency plan and concurrent plan for the child. Thereafter, until the permanency plan or concurrent permanency plan is achieved, the court shall conduct a permanency hearing and permanency review hearings pursuant to these rules.

(4) *Additional orders.* After a child is ordered into custody, the court may:

(i) arrange for the custody of the child with any private institution or agency caring for children;

(ii) may commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq.; or

(iii) may order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

Rule 11(a), -(b) — These provisions comport with the statutory procedures. See Miss. Code Ann. §§ 43-21-301, -307, -315 (2008).

Rule 11(a)(1) — Factors the court may consider in determining whether custody is necessary include: the child's family ties and relationships; the child's prior delinquency record; the violent nature of the alleged offense; the child's prior history of committing acts that resulted in bodily injury to others; the child's character and mental condition; the court's ability to supervise the child if placed with a parent or relative; the child's ties to the community; the risk of nonappearance; the danger to the child or public if the child is released; another petition is pending against the child; the home conditions of the child; and a violation of a valid court order. Accord Michigan Court Rule 3.935(C). The court must include its findings in the temporary custody or custody order.

Justice and municipal courts may not issue an order to take a child into custody, or an arrest warrant, for any child within the exclusive original jurisdiction of the youth court. Such is not applicable to offenses outside the exclusive original jurisdiction of the youth court, e.g., hunting, fishing or traffic violations. See White v. Walker, 950 F.2d 972, 979 (5th Cir. 1991). However, in those instances, the custody of the child must comply with all state and federal laws pertaining to the detention of juveniles. See U.R.Y.C.P. 19(c). When a child convicted of a misdemeanor offense by a criminal court having original jurisdiction of the misdemeanor charge and the sentence includes that the child is to be committed to, incarcerated in or imprisoned in a jail or other place of detention, the commencement of such commitment, incarceration or imprisonment in a jail or other place of detention is stayed until the criminal court has notified the youth court judge or the judge's designee of the conviction and sentence.

Rule 11(a)(2). — A parent, guardian, or custodian of a child is a party to the case. Such includes the Department of Human Services, Division of Youth Services whenever it is serving as the legal or physical custodian of the child under the Mississippi Youth Court Law.

Rule 11(b)(2). — A parent, guardian, or custodian of a child is a party to the case. Such includes the Department of Human Services. Division of Family and Children's Services whenever it is serving as the legal or physical custodian of the child under the Mississippi Youth Court Law.

The foster child relative licensing process consists of: (1) an emergency process and (2) a full licensing process. The emergency process requires, in accordance with Mississippi Department of Human Services policies, that background checks and Central Registry checks be completed on all persons residing in the home who are fourteen (14) years of age or older and the completion of an emergency placement safety checklist of the home. The full licensing process requires, in accordance with Mississippi Department of Human Services policies, that the relative completes, within 90 calendar days after the child has been placed in the home, the full home study, and all other licensure requirements. See Mississippi Division of Family and Children's Services. Policy § F at 33-35 (Rev. 2013); see also Olivia Y., 351 F. Supp. 2d 543 (S.D. Miss. 2004) (regarding the placement of children in DCFS custody with available relatives).

Emergency Placement Safety Checklist. — The Emergency Placement Safety Checklist requires the family protection specialist or caseworker to: conduct a local law enforcement background check;

conduct a MACWIS background check;

conduct a gun safety check (all weapons shall be safely stored away);

check that all utilities are working;

check that there is access to an operable telephone;

check that there is clear access to exits;

check that hazardous substances are safeguarded;

check that premises are free of rodents and insects;

check that the refrigerator, stove and oven are operable;

check that there is a functional sewage system; and

check that the interior plumbing has running warm and cold water.

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. § 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

Rule 11(a)(4), -(b)(4). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-315(4) (2008).

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to custody orders include:

Removal and foster care placement requirements. — 42 U.S.C. § 672(a)(2)(A); 671(a)(15) (2008) (requiring "contrary to the welfare of the child" and "reasonable efforts" determinations as set forth therein for eligibility of Title IV-E foster care maintenance payments).

Reasonable efforts determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts determination. . . .

(1) Judicial determination of reasonable efforts to prevent a child's removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the Title IV-E foster care maintenance payments program for the duration of that stay in foster care.

Judicial determination of reasonable efforts to finalize a permanency plan.

45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(2) Judicial determination of reasonable efforts to finalize a permanency plan.

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under Title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

Contrary to the welfare determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care.

Concurrent planning. — 45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(4) Concurrent planning. Reasonable efforts to finalize an alternative permanency plan may be made concurrently with reasonable efforts to reunify the child and family.

Detention of juveniles. — 42 U.S.C. § 5633 (2008); 28 C.F.R. 31.301 (2008) (setting forth requirements for placing juveniles in secure juvenile detention).

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 12. Taking into custody without custody order.

Procedures for taking into custody without a custody order a child in a matter in which the youth court has exclusive original jurisdiction shall be pursuant to Section 43-21-303 of the Mississippi Code. The custody of any child taken into custody shall comply with the detention requirements of Sections 43-21-301(6) and 43-21- 315 of the Mississippi Code. (Adopted effective January 8, 2009.)

COMMENT

Rule 12. — For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. §§ 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

Custody of a child taken into custody without an order may not exceed twenty-four (24) hours unless an order for temporary custody has been issued pursuant to Rule 11 of these rules. Miss. Code Ann. § 43-21-303(4) provides:

> A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours. and shall be released to his parent. guardian or custodian unless the judge or his designee authorizes temporary custody.

(Amended effective December 1, 2016.)

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to taking a child into custody without a custody order include:

Removal and foster care placement requirements. — 42 U.S.C. §§ 671(a)(15), -672(a)(2)(A) (2008) (requiring "contrary to the welfare of the child" and "reasonable efforts" determinations as set forth therein for eligibility of Title IV-E foster care maintenance payments).

Reasonable efforts determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

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Detention of juveniles. — 42 U.S.C. § 5633 (2008); 28 C.F.R. § 31.301 (2008) (setting forth requirements for placing juveniles in secure juvenile detention).

Rule 13. Appointment of guardian ad litem.

(a) *Appointment of guardian ad litem.* The court shall appoint a guardian ad litem for the child when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first,

(1) when a child has no parent, guardian or custodian;

(2) when the court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;

(3) when the parent is a minor or a person of unsound mind;

(4) when the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;

(5) in every case involving an abused or neglected child which results in a judicial proceeding; or

(6) in any other instance where the court finds appointment of a guardian ad litem to be in the best interest of the child.

Upon appointment of a guardian ad litem, the court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause.

(b) *Qualifications of guardian ad litem.* The court shall only appoint as guardian ad litem a competent person who has no adverse interest to the minor and who has received, in accordance with Section 43-21-121(4) of the Mississippi Code, the requisite child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment.

(c) *Duties of guardian ad litem.* The guardian ad litem, in addition to all other duties required by law, shall:

(1) protect the interest of a child for whom he/she has been appointed guardian ad litem; and

(2) investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.

The court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards.

When conducting an investigation under this rule, the guardian ad litem shall inform the child and the parent(s), guardian(s), or custodian(s) that the

Rule 12. Taking into custody without custody order.

Procedures for taking into custody without a custody order a child in a matter in which the youth court has exclusive original jurisdiction shall be pursuant to Section 43-21-303 of the Mississippi Code. The custody of any child taken into custody shall comply with the detention requirements of Sections 43-21-301(6) and 43-21- 315 of the Mississippi Code. (Adopted effective January 8, 2009.)

COMMENT

Rule 12. — For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. §§ 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

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> A child taken into custody shall not be held in custody for a period longer than reasonably necessary, but not to exceed twenty-four (24) hours. and shall be released to his parent. guardian or custodian unless the judge or his designee authorizes temporary custody.

(Amended effective December 1, 2016.)

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to taking a child into custody without a custody order include:

Removal and foster care placement requirements. — 42 U.S.C. §§ 671(a)(15), -672(a)(2)(A) (2008) (requiring "contrary to the welfare of the child" and "reasonable efforts" determinations as set forth therein for eligibility of Title IV-E foster care maintenance payments).

Reasonable efforts determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

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Contrary to the welfare determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care.

Detention of juveniles. — 42 U.S.C. § 5633 (2008); 28 C.F.R. § 31.301 (2008) (setting forth requirements for placing juveniles in secure juvenile detention).

Rule 13. Appointment of guardian ad litem.

(a) *Appointment of guardian ad litem.* The court shall appoint a guardian ad litem for the child when custody is ordered or at the first judicial hearing regarding the case, whichever occurs first,

(1) when a child has no parent, guardian or custodian;

(2) when the court cannot acquire personal jurisdiction over a parent, a guardian or a custodian;

(3) when the parent is a minor or a person of unsound mind;

(4) when the parent is indifferent to the interest of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict;

(5) in every case involving an abused or neglected child which results in a judicial proceeding; or

(6) in any other instance where the court finds appointment of a guardian ad litem to be in the best interest of the child.

Upon appointment of a guardian ad litem, the court shall continue any pending proceedings for a reasonable time to allow the guardian ad litem to become familiar with the matter, consult with counsel and prepare for the cause.

(b) *Qualifications of guardian ad litem.* The court shall only appoint as guardian ad litem a competent person who has no adverse interest to the minor and who has received, in accordance with Section 43-21-121(4) of the Mississippi Code, the requisite child protection and juvenile justice training provided by or approved by the Mississippi Judicial College within the year immediately preceding such appointment.

(c) *Duties of guardian ad litem.* The guardian ad litem, in addition to all other duties required by law, shall:

(1) protect the interest of a child for whom he/she has been appointed guardian ad litem; and

(2) investigate, make recommendations to the court or enter reports as necessary to hold paramount the child's best interest.

The court shall insure that guardians ad litem perform their duties properly and in the best interest of their wards.

When conducting an investigation under this rule, the guardian ad litem shall inform the child and the parent(s), guardian(s), or custodian(s) that the role of the guardian ad litem is to act as an arm of the court in protecting the interest of the child, and not as the parties' attorney, and that any statements made to the guardian ad litem affecting the health, safety, or welfare of the child will be reported to the court.

(d) *Reasonable fees.* The guardian ad litem shall be paid a fee in the performance of duties pursuant to Section 43-21-121(6) of the Mississippi Code. The court may order financially able parents to pay for the reasonable fees of the guardian ad litem, or a portion thereof, pursuant to Section 43-21-619 of the Mississippi Code.

(e) *Appointment of volunteer trained layperson to assist children.* The court may appoint a volunteer trained layperson to assist children, in addition to the appointment of a guardian ad litem, pursuant to Section 43-21-121(7) of the Mississippi Code.

(f) *Appointment of an attorney if conflict exists.* If there is a conflict between the child's preferences and the guardian ad litem's recommendation, the court shall retain the guardian ad litem to represent the best interest of the child and appoint an attorney to represent the child's preferences. The court shall then continue the proceedings for a reasonable time to allow the newly appointed attorney to prepare for the cause.

(g) *Appointment of attorney in delinquency matters.* In delinquency matters, if a guardian ad litem is appointed, the guardian ad litem and the legal defense counsel for the child cannot be the same person. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

Rule 13(a). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(1), (4), (5) (2008).

The appointment of a guardian ad litem pursuant to this rule is a mandatory obligation. See Miss. Code Ann. § 43-21-121(1), -(2) (2008); In re R.D., 658 So. 2d 1378, 1385 (Miss. 1995) ("Whether requested or not, judges have the obligation to appoint a guardian ad litem to represent every minor alleged to be abused or neglected as the statute requires.").

Rule 13(b). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(3), -(4) (2008).

The Mississippi Judicial College presently requires six (6) hours of child protection and guardian ad litem training through an educational program approved by the Director of the Mississippi Judicial College for any appointment within 365 days thereof.

Rule 13(c). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(3) (2008).

The guardian ad litem has the responsibility to fully protect the interests of the child. See In re D.K.L., 652 So. 2d 184, 191 (Miss. 1995). Such requires being prepared to testify as to the present health, education, estate and general welfare of the child, which, of necessity, requires interviewing the minor children, their current custodians, and prospective parents, if any. See M.J.S.H.S. v. Yalobusha County Dep't of Human Servs., 782 So. 2d 737, 741 (Miss. 2001). Additionally, the guardian ad litem must submit a written report to the court during the hearing, or testify and thereby become available for cross-examination by the natural parent. See D.J.L. v. Bolivar County Dep't of Human Servs., 824 So. 2d 617, 623 (Miss. 2002). The court should include in its findings of facts and conclusions of law a summary of the guardian ad litem's recommendations, whether it agrees or disagrees with the guardian ad litem, and why. In re L.D.M., 848 So. 2d 181, 183

(Miss. 2003); S.N.C. v. J.R.D., 755 So. 2d 1077, 1082 (Miss. 2000).

Recommendations or reports by the guardian ad litem pursuant to this provision shall not constitute an ex parte communication.

Rule 13(d). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(6) (2008). It also allows the court, pursuant to Section 43-21-619 of the Mississippi Code, to order financially able parents to pay for the reasonable fees awarded the guardian ad litem or a portion thereof. Such is consistent with the philosophy expressed in Section 43-21-103 of the Mississippi Code. Parental accountability is a key element in achieving a child's productive citizenry.

Factors to be weighed when considering the proper amount of guardian ad litem fees to be awarded include: (1) the relative ability of the parties; (2) the skill and standing of the attorney employed; (3) the nature of the case and novelty and difficulty of the questions at issue; (4) the degree of responsibility involved in the management of the case; (5) the time and labor required; (6) the usual and customary charge in the community; and (7) preclusion of other employment by the attorney due to the acceptance of the case. See In re L.D.M., 872 So. 2d 655, 657 (Miss. 2004).

Rule 13(e). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-121(7) (2008).

Rule 13(f). — This provision addresses the situation where the child opposes the recommendation of the guardian ad litem who is also an attorney. Since a guardian ad litem may not simultaneously represent the best interest of the child and advocate the child's preferences, the court must appoint an attorney to represent the child's preferences while retaining the appointed guardian ad litem to represent the best interest of the child.

Rule 13(g). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-201(1) (2008).

(Amended effective December 1, 2016.)

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 14. Attorney of record/withdrawal of counsel.

(a) *Appointment of counsel in delinquency and children in need of supervision matters.* In delinquency and children in need of supervision matters, the youth court shall appoint legal counsel to represent indigent children at all critical stages, which include, but are not limited to, detention, adjudicatory, and disposition hearings and parole and probation revocation proceedings.

(b) *Entry of appearance.* An attorney shall be deemed of record when the attorney appears personally before the court, files a written entry of appearance, or has been appointed by the court. Once an attorney is deemed of record that attorney shall continue to represent the party in all proceedings pertaining to the case except upon a withdrawal of counsel as set forth in Rule 14(c). After an entry of appearance, counsel shall be served with copies of all subsequent pleadings, motions and notices required to be served on the party which counsel represents.

(c) *Withdrawal of counsel.* An attorney who has made an entry of appearance shall not be permitted to withdraw from the case until a timely appeal if any has been decided, except by leave of the court after a notice of withdrawal has been served on the party which counsel represents. (Adopted effective January 8, 2009.)

COMMENT

Rule 14. — This rule comports with the statutory procedures. See Miss. Code Ann. § 43-21-201(4) (2008). It is not to be construed to extend or limit the right to counsel under the Mississippi Youth Court Law.

Qualifications for attorneys appointed to delinquency cases. — Miss. Code Ann. § 43-21-201(3) provides:

An attorney appointed to represent a delinquent child shall be required to complete annual juvenile justice training that is approved by the Mississippi Judicial College or the Mississippi Commission on Continuing Legal Education. The Mississippi Judicial College and the Mississippi Commission on Continuing Legal Education shall determine the amount of juvenile justice training and continuing education required to fulfill the requirements of this subsection. The Administrative Office of Courts shall maintain a roll of attorneys who have complied with the training requirements and shall enforce the provisions of this subsection. Should an attorney fail to complete the annual training requirement or fail to attend the required training within six (6) months of being appointed to a youth court case, the attorney shall be disqualified to serve and the youth court shall immediately terminate the representation and appoint another attorney. Attorneys appointed by a youth court to five (5) or fewer cases a year are exempt from the requirements of this subsection.

Rule 15. Prehearing procedures.

(a) *Discovery.*

(1) *Request for discovery.* The child or other party to an adjudicatory hearing, or any proceeding thereafter, may make a written request for discovery to any other party consistent with the United States Constitution and the Mississippi Constitution and to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law. A written request for discovery shall be made, if possible, no later than seven (7) days preceding the date set for the adjudicatory hearing or other applicable proceeding. The child or other party making a written request for discovery shall promptly provide reciprocal discovery to the party upon whom the discovery request was made. Recipients of discovery who disclose or encourage the disclosure of any records involving children or the contents thereof, except as authorized under the Mississippi Youth Court Law, shall be subject to the sanctions set forth in Section 43-21-267 of the Mississippi Code. No request for discovery shall be made until after a petition has been filed.

(2) *Application for a discovery order.* If a request for discovery is refused, application may be made to the court for a written order granting the discovery. Motions for discovery shall certify that a request for discovery has been made and refused. An order granting discovery may make such discovery reciprocal for all parties to the proceeding, including the party requesting discovery. The court may deny, in whole or part, or otherwise limit or set conditions for discovery, upon its own motion, or upon a showing by a party upon whom a request for discovery is made that granting discovery may jeopardize the safety of a party, witness, or confidential informant, result in the production of perjured testimony or evidence, endanger the existence of physical evidence, violate a privileged communication, disclose confidential

information, or impede the criminal prosecution of a minor as an adult or of an adult charged with an offense arising from the same transaction or occurrence. An application for a discovery order shall be made, if possible, no later than seven (7) days preceding the date set for the adjudicatory hearing or other applicable proceeding. Any hearing on an application for a discovery order shall be conducted in a way that protects the best interests of the child and the interest of justice.

(3) *Depositions.* Depositions may only be taken as authorized by the court.

(4) *Failure to comply.* If at any time prior to the adjudicatory hearing, or other applicable proceeding, it is brought to the attention of the court that a person has failed to comply with a discovery order issued pursuant to this rule, the court may grant a continuance, prohibit the person from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. In no event shall a continuance be granted pursuant to this rules provision if the child or other party has failed to make an application to the court for a discovery order.

(b) *Notice of alibi or insanity defense.*

(1) *Time.* No later than seven (7) days before the date of the adjudication hearing, the child or the child's attorney must file a written notice with the court and prosecuting attorney of the intent to rely on a defense of alibi or insanity. The notice shall include a list of names and addresses of defense witnesses.

(2) *Notice of rebuttal witnesses.* Within seven (7) days after the receipt of notice, but no later than two (2) days before the adjudication hearing date, the prosecutor shall provide written notice to the court and defense of an intent to offer rebuttal to the above listed defenses. The notice shall include names and addresses of rebuttal witnesses.

(3) *Furnishing notification of additional witnesses.* If, prior to or during the adjudication hearing, a party learns of an additional witness whose identity, if known, should have been included in the information previously furnished, the party shall promptly notify the other party or the party's attorney of the name and address of such additional witness.

(4) *Sanctions.* Upon the failure of either party to comply with the requirements of this rule, the court may use such sanctions as it deems just and proper under the circumstances, including: granting a continuance; limiting further discovery of the party failing to comply; finding the attorney failing to comply in contempt; or excluding the testimony of the undisclosed witness. In no event shall the court limit the right of the defendant to testify in his/her own behalf. For good cause shown, the court may grant an exception to any of the requirements of this rules provision.

(c) *Motion practice.* The following provisions shall apply to all written motions in proceedings subject to these rules.

(1) *Filing.* The original of each motion, and all affidavits and other supporting evidentiary documents, shall be filed within five (5) days of the applicable judicial hearing with the clerk of the youth court in the county where the action is docketed. The moving party at the same time shall serve a copy of the

motion(s) upon each of the parties, with proof of service being upon certificate of the person executing the same, and mail a copy thereof to the youth court judge or referee at the judge's or referee's mailing address. Responses and supporting evidentiary documents shall be filed in the same manner.

(2) *Memoranda and briefs.* Accompanying memoranda or briefs in support of motions are encouraged but not required. Where the movant has served a memorandum or brief, respondent may serve a reply within five (5) days after service of the movant's memorandum or brief. A rebuttal memorandum or brief may be served within five (5) days of service of the reply memorandum. No memorandum or brief required or permitted herein shall be filed with the clerk. Memoranda or briefs shall not exceed twenty-five (25) pages in length.

(d) *Prehearing conference.*

At any time after the filing of the petition, the court may, on its own motion or the motion of any party, direct the attorneys for the parties to appear before it for a prehearing conference to consider and determine:

(1) the simplification of issues;

(2) the necessity or desirability of amendments to the petition;

(3) the amount of time necessary to complete discovery;

(4) whether the child intends to raise an alibi or insanity defense;

(5) the limitation of the number of expert witnesses;

(6) the exchange of reports of expert witnesses expected to be called by each party, but only to the extent that such does not require the disclosure of confidential or privileged information prohibited from disclosure pursuant to Rule 5 of these rules or otherwise by law;

(7) the possibility of obtaining admissions of facts and of documents and other exhibits which will avoid unnecessary proof;

(8) the imposition of sanctions as authorized by these rules;

(9) such other matters as may aid in the disposition of the action.

The court may enter an order reciting the action taken at the conference, the amendments allowed to the petition, and the agreements made by the parties as to any other matters considered, and limiting issues for the hearing to those not disposed of by admissions or agreements of counsel; and such order shall control the subsequent course of the proceedings, unless modified at the hearing to prevent manifest injustice. (Adopted effective January 8, 2009.)

Rule 16. Detention hearings/shelter hearings.

(a) *Delinquency and child in need of supervision proceedings.* A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:

(1) A written report, complaint, or petition has been filed.

(2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem, if any; and to the child's counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.

(3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.

(4) At the conclusion of the detention hearing, the court finds and the detention order recites that:

(i) that there is probable cause the child is within the jurisdiction of the court; and

(ii) that there is probable cause that custody is necessary.

Custody shall be deemed necessary: (1) when a child is endangered or any person would be endangered by the child; or to insure the child's attendance in court at such time as required; or when a parent, guardian or custodian is not available to provide for the care and supervision of the child; and (2) there is no reasonable alternative to custody.

Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301 of the Mississippi Code.

(5) The court orders custody of the child and that a petition be filed if one has not been filed.

The child with advice of counsel may waive in writing the time of the detention hearing or the detention hearing itself.

(b) *Child protection proceedings.* A child who has been ordered or taken into custody may be held in custody for longer than temporary custody if:

(1) A written report, complaint, or petition has been filed.

(2) Reasonable oral or written notice of the time, place and purpose of the hearing has been given to the child; to the child's parent, guardian or custodian; to the child's guardian ad litem, if any; and to the child's counsel. If the parent, guardian or custodian cannot be found, the youth court may hold the hearing in the absence of the child's parent, guardian or custodian.

(3) All parties present are afforded the opportunity to present evidence and cross-examine witnesses produced by others. The youth court may, in its discretion, limit the extent but not the right or presentation of evidence and cross-examination of witnesses. The youth court may receive any testimony and other evidence relevant to the necessity for the continued custody of the child without regard to the formal rules of evidence, including hearsay and opinion evidence. All testimony shall be made under oath and may be in narrative form.

(4) At the conclusion of the shelter hearing, the court finds and the shelter order recites that:

(i) there is probable cause the child is within the jurisdiction of the court;

(ii) there is probable cause that custody is necessary as described in Rule 16(a)(4)(ii) of these rules; and

(iii) the effect of the continuation of the child's residing within the child's own home would be contrary to the welfare of the child; that the placement of the child in foster care is in the best interest of the child; and, unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c) of the Mississippi Code: (1) reasonable efforts have been made to maintain the child within the child's own home, but that the circumstances warrant the child's removal and there is no reasonable alternative to custody; or (2) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, and there is no reasonable alternative to custody. The court shall order that reasonable efforts be made towards the reunification of the child with the child's family if it finds and the shelter order recites that the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within the child's own home, and there is no reasonable alternative to custody.

Unless there is substantial compliance with these procedures, the court shall order the child to be released to the custody of the child's parent, guardian, or custodian. Any order placing a child into custody shall comply with the requirements provided in Section 43-21-301 of the Mississippi Code.

(5) The court orders custody of the child and that a petition be filed if one has not been filed.

The child's guardian ad litem, and parent, guardian or custodian, and child may waive in writing the time of the shelter hearing or the shelter hearing itself. The child's consent is not required if the child has not reached ten (10) years of age. (Adopted effective January 8, 2009.)

COMMENT

Rule 16(a), -(b). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-309 (2008).

Factors the court may consider in determining whether custody is necessary include: the child's family ties and relationships; the child's prior delinquency record; the violent nature of the alleged offense; the child's prior history of committing acts that resulted in bodily injury to others; the child's character and mental condition; the court's ability to supervise the child if placed with a parent or relative; the child's ties to the community; the risk of nonappearance; the danger to the child or public if the child is released; another petition is pending against the child; the home conditions of the child; and a violation of a valid court order. Accord Michigan Court Rule 3.935(C). The court must include its findings in the detention or shelter order.

Rule 16(b)(4)(iii). — For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "reasonable efforts" determination must be made no later than 60 days from the date the child is removed from the home. See 42 U.S.C. §§ 672(a)(2)(A), -671(a)(15) (2008); 45 C.F.R. § 1356.21(b)(1) (2008).

For purposes of eligibility of foster care maintenance payments under Title IV-E of the Social Security Act, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. See 42 U.S.C. § 672(a)(2)(A) (2008); 45 C.F.R. § 1356.21(c) (2008).

(Amended effective December 1, 2016.)

FEDERAL REQUIREMENTS

Reasonable efforts determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts determination. . . .

(1) Judicial determination of reasonable efforts to prevent a child's removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the Title IV-E foster care maintenance payments program for the duration of that stay in foster care.

Contrary to the welfare determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care.

Rule 17. Rights of child in custody for delinquency and child in need of supervision proceedings.

Procedures governing the rights of a child taken into custody for delinquency or as a child in need of supervision shall be in compliance with Section 43-21-311 of the Mississippi Code. (Adopted effective January 8, 2009.)

COMMENT

The rights set forth in Section 43-21-311 of the Mississippi Code attach whenever the child is taken into custody for an offense which is within the jurisdiction of the youth court. See Smith v. State, 534 So. 2d 194, 196 (Miss. 1988) ("At the time [the child] gave his confession he had not been charged with any crime that would remove him from the Youth Court's jurisdiction . . . Therefore, the circumstances surrounding [his] confession must satisfy the Youth Court Act."). However, these rights do not necessarily apply to a minor who is a suspect in a crime carrying a potential life or death sentence. See Moody v. State, 838 So. 2d 324, 334 (Miss. Ct. App. 2002) ("Once a minor becomes a suspect in a crime carrying a potential life sentence or death, to the extent that it becomes necessary to detain that person and inform him of his Miranda rights prior to an attempt to interrogate him, we conclude that Section 43-21-151(1)(a) is sufficiently invoked so as to remove that youthful suspect from the protections otherwise afforded him under the Youth Court Act."). If the rights are applicable then failure to abide by them may constitute a violation of due process. See Gallegos v. Colorado, 370 U.S. 49, 55 (1962) ("The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, the failure to see to it that he had the advice of a lawyer or a friend — all of these combine to make us conclude that the formal confession . . . was obtained in violation of due process."); Edmonds v. State, 955 So. 2d 787, 804 (Miss. 2007) ("[The] absence of a parent or guardian during the interrogation of a [child who was under the jurisdiction of the youth court] goes directly to the issue of voluntariness; such a violation renders the statement inadmissible as a violation of basic constitutional guarantees.").

Rule 18. Release from custody upon change of circumstances.

Procedures governing the release of a child from custody upon a change in circumstances shall be conducted pursuant to Section 43-21-313 of the Mississippi Code. (Adopted effective January 8, 2009.)

Rule 19. Proper facilities.

(a) *Designating detention or shelter facilities.* The youth court shall, by general order or rule of court, designate the available detention or shelter facilities to which children shall be delivered when taken into custody. Copies of the order or rule shall be made available to the Department of Human Services and all law enforcement agencies within the territorial jurisdiction of the youth court.

(b) *Detention prohibitions.* Except as otherwise provided in the Mississippi Youth Court Law, unless jurisdiction is transferred, no child shall be placed in any adult jail or place of detention of adults by any person or court. This rules provision shall not be construed to apply to commitments to the training school under Section 43-21-605(1)(g)(iii) of the Mississippi Code.

(c) *Detention of children charged with certain misdemeanor offenses.* Any child who is charged with a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or any other criminal offense for which the youth court shall have power on its own motion to remove jurisdiction from any criminal court, may be detained only in the same juvenile facilities designated by the youth court for children within the jurisdiction of the youth court.

(d) *Arranging for the custody, care and maintenance of a child ordered into custody.* After a child is ordered into custody, the court may:

(i) arrange for the custody of the child with any private institution or agency caring for children;

(ii) commit the child to the Department of Mental Health pursuant to Section 41-21-61 et seq.; or

(iii) order the Department of Human Services or any other public agency to provide for the custody, care and maintenance of the child. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

Cross References — Mississippi Implied Consent Law, see § 63-11-1 et seq.

COMMENT

Rule 19(a). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-315(1) (2008). Federal law prohibits placing juveniles alleged to be dependent, neglected, or abused in secure juvenile detention. See 42 U.S.C. §

5633(a)(11)(B) (2008). Unless there is a valid court order, a child in need of supervision (other than an out-of-state runaway pending return to the child's home state) shall not be held in secure juvenile detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial appearance.

Four core protections requiring State compliance. — The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants under the JJDP Act:

-Deinstitutionalization of status offenders (DSO).

-Separation of juveniles from adults in institutions (separation).

-Removal of juveniles from adult jails and lockups (jail removal).

-Reduction of disproportionate minority contact (DMC), where it

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, GUIDANCE MANUAL FOR MONITORING FACILITIES UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 2002 1 (SEPTEMBER 2003).

Rule 19(b). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-315(2) (2008); accord 42 U.S.C. §§ 5603, -5633 (2008); 28 C.F.R. § 31.303(e)(3)(i)(C)(2008)

Rule 19(c). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-315(3) (2008).

Rule 19(d). — This provision is congruent with Mississippi's constitutional mandates. See Miss. Const. Art. IV, § 86 ("It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state."); In re B.C.M., 744 So. 2d 299, 303 (Miss. 1999) ("The Constitution requires that the State assume responsibility for [the child], and reasonable statutory interpretation requires the director to provide temporary housing, treatment and care, which should become permanent when adequate "services and facilities are available" in the facility. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment."); see also Miss. Code Ann. § 43-21-315(4) (2008).

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to proper facilities include:

Secure detention facility means. — 42 U.S.C. § 5603 (2008) provides in part:

(12) the term "secure detention facility" means any public or private residential facility which —

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or of any other individual accused of having committed a criminal offense; . . .

Secure correction facility means. — 42 U.S.C. § 5603 (2008) provides in part:

(13) the term "secure correctional facility" means any public or private residential facility which —

(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and

(B) is used for the placement, after adjudication and disposition, of any juvenile who has been adjudicated as having committed an offense or any other individual convicted of a criminal offense; . . .

Contact with adult inmates prohibited. — 42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants shall] ...

(12) provide that —

(A) juveniles alleged to be or found to be delinquent or juveniles within the purview of paragraph (11) will not be detained or confined in any institution in which they have contact with adult inmates; and

(B) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, have been trained and certified to work with juveniles; . . .

Contact means. — 42 U.S.C. § 5603 (2008) provides in part:

(25) the term "contact" means the degree of interaction allowed between juvenile offenders in a secure custody status and incarcerated adults under Section 31.303(d)(1)(i) of Title 28, Code of Federal Regulations, as in effect on December 10, 1996; . . .

Collated facilities means. — 42 U.S.C. § 5603 (2008) provides in part:

(28) the term "collocated facilities" means facilities that are located in the same building, or are part of a related complex of buildings located on the same grounds; . . .

Criteria for juvenile facilities if collated with an adult jail or lockup. — See 28 C.F.R. § 31.303(e)(3)(i)(C) (2008) (setting forth four criteria to be met to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup).

Status offenders who commit violation of valid court order. — 42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants] . . .

(11) shall, in accordance with rules issued by the Administrator, provide that —

(A) juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult, excluding — . . .

(ii) juveniles who are charged with or who have committed a violation of a valid court order; shall not be placed in secure detention facilities or secure correctional facilities; . . .

Alleged dependent, neglected, or abused children not be placed in secure detention. — 42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants] . . .

(11) shall, in accordance with rules issued by the Administrator, provide that — . . .

(B) juveniles —

(i) who are not charged with any offense; and

(ii) who are —

(I) aliens; or

(II) alleged to be dependent, neglected, or abused; shall not be placed in secure detention facilities or secure correctional facilities; . . .

Six hour jail or lockup limitation. — 42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants shall] . . .

(13) provide that no juvenile will be detained or confined in any jail or lockup for adults except —

(A) juveniles who are accused of nonstatus offenses and who are detained in such jail or lockup for a period not to exceed 6 hours —

(i) for processing or release;

(ii) while awaiting transfer to a juvenile facility; or

(iii) in which period such juveniles make a court appearance; and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and adult inmates in collocated facilities have been trained and certified to work with juveniles; . .

Forty-eight hour jail or lockup limitation if awaiting initial court appearance. — See 42 U.S.C. § 5633 (2008) provides in part:

[A State plan to receive formula grants shall] . ..

(13) provide that no juvenile will be detained or confined in any jail or lockup for adults except — . . .

(B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48 hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays), and who are detained in a jail or lockup —

(i) in which —

(I) such juveniles do not have contact with adult inmates; and

(II) there is in effect in the State a policy that requires individuals who work with both such juveniles and adults inmates in collocated facilities have been trained and certified to work with juveniles; and

(ii) that —

(I) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget) and has no existing acceptable alternative placement available;

(II) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48 hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed an additional 48 hours) delay is excusable; or

(III) is located where conditions of safety exist (such as severe adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonable safe travel; . . .

Rule 20. Petition.

(a) *Delinquency proceedings.*

(1) *Filing.* All proceedings seeking an adjudication that a child is a delinquent child shall be initiated by the filing of a petition. Upon referral by the youth court, the youth court prosecutor may file a petition to initiate formal proceedings.

(2) *Time.* The petition shall be filed within five (5) days from the date of a detention hearing continuing custody. In non-custody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

(3) *Form.* The petition shall be entitled "IN THE INTEREST OF ________."

(4) *Contents.* The petition shall set forth plainly and concisely with particularity:

(i) identification of the child, including the child's full name, birth date, age, sex and residence;

(ii) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;

(iii) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a delinquent child;

(iv) a citation of the statute or ordinance which the child is alleged to have violated;

(v) a prayer for the type of adjudicatory relief sought; and

(vi) if any of the facts herein required are not known by the petitioner.

The petition must recite factual allegations with the same particularity required in a criminal indictment but need not have the technical form of a criminal indictment. Error in or omission of the citation shall not be grounds for dismissing the petition or for a reversal of the adjudication based thereon if the error or omission did not mislead the child to the child's prejudice.

On each petition alleging a delinquent child, the following notice shall be placed in capital letters at the bottom of the petition:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-615 OR SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(5) *Two or more offenses alleged in same petition.* Two (2) or more offenses may be alleged in the same petition in a separate count for each offense if each particular offense is one in which a child could be adjudicated either as a delinquent child or as a child in need of supervision. On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order and, after the disposition hearing, a separate disposition on that count within its disposition order. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current dispositions, as it deems in the best interest of the child and in the interest of justice.

(6) *Motion to transfer to a criminal court.* The petition may contain a motion to transfer.

(7) *Amendments.* A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.

(8) *Responsive pleadings not required.* No party shall be required to file a responsive pleading.

(b) *Child in need of supervision proceedings.*

(1) *Filing.* All proceedings seeking an adjudication that a child is a child in need of supervision shall be initiated by the filing of a petition. Upon referral

by the youth court, the youth court prosecutor may file a petition to initiate formal proceedings.

(2) *Time.* The petition shall be filed within five (5) days from the date of a detention hearing continuing nonsecure placement custody. In non-custody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

(3) *Form.* The petition shall be entitled "IN THE INTEREST OF ________."

(4) *Contents.* The petition shall set forth plainly and concisely with particularity:

(i) identification of the child, including the child's full name, birth date, age, sex and residence;

(ii) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;

(iii) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a child in need of supervision;

(iv) a prayer for the type of adjudicatory relief sought; and

(v) if any of the facts herein required are not known by the petitioner.

On each petition alleging a child in need of supervision, the following notice shall be placed in capital letters at the bottom of the petition:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(5) *Two or more offenses alleged in same petition.* Two (2) or more offenses may be alleged in the same petition in a separate count for each offense if each particular offense is one in which a child could be adjudicated either as a

delinquent child or as a child in need of supervision. On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order and, after the disposition hearing, a separate disposition on that count within its disposition order. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current dispositions, as it deems in the best interest of the child and in the interest of justice.

(6) *Amendments.* A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.

(7) *Responsive pleadings not required.* No party shall be required to file a responsive pleading.

(c) *Child protection proceedings.*

(1) *Filing.* All proceedings seeking an adjudication that a child is a neglected child or an abused child shall be initiated by the filing of a petition. Upon referral by the youth court, the youth court prosecutor may file a petition to initiate formal proceedings.

(2) *Time.* The petition shall be filed within five (5) days from the date of a shelter hearing continuing custody. In noncustody cases, unless another period of time is authorized by the court, the petition shall be filed within ten (10) days of the court's referral of the matter to the youth court prosecutor for consideration of initiating formal proceedings. The court may, in its discretion, dismiss the petition for failure to comply with the time schedule contained herein.

(3) *Form.* The petition shall be entitled "IN THE INTEREST OF ________."

(4) *Contents.* The petition shall set forth plainly and concisely with particularity:

(i) identification of the child, including the child's full name, birth date, age, sex and residence;

(ii) identification of the parent, guardian or custodian including the name and residence of the child's parents, the name and residence of the child's legal guardian, if there be one, any person or agency in whose custody the child may be and the child's nearest relative if no parent or guardian be known;

(iii) a statement of the facts, including the facts which bring the child within the jurisdiction of the youth court and which show the child is a neglected child or an abused child;

(iv) a prayer for the type of adjudicatory relief sought; and

(v) if any of the facts herein required are not known by the petitioner.

On each petition alleging an abused or neglected child, the following notice shall be placed in capital letters at the bottom of the petition:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS

AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(5) *Two or more children subject of the same petition.* Two (2) or more children may be the subject of the same petition if: (i) they are siblings and (ii) they are alleged to be neglected or abused from a common source of mistreatment or neglect. On each charge of abuse and neglect in the same petition admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that charge within its adjudicatory order and, after the disposition hearing, a separate disposition on that charge in its disposition order.

(6) *Amendments.* A petition may be amended at any time on order of the youth court for good cause shown so long as there is no prejudice to the parties.

(7) *Responsive pleadings not required.* No party shall be required to file a responsive pleading. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

Rule 20(a)(1), -(b)(1), -(c)(1). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-451 (2008).

Intake shall assign, pursuant to step 5 of Exhibit A of the Uniform Youth Court Case Identification and Docket Numbering System, a petition number for each petition filed on matters coming before the youth courts of the State of Mississippi. See Amended Special Order No. 46 (Miss. Dec. 12, 1997).

Rule 20(a)(2), -(b)(2), -(c)(2). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-451 (2008).

Rule 20(a)(3), -(b)(3), -(c)(3). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-453 (2008).

Rule 20(a)(4), -(b)(4), -(c)(4). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-455 (2008).

A petition which institutes a youth court proceeding must recite factual allegations specific and definite enough to fairly apprise the child, the child's parents, custodians or guardians of the particular act or acts of misconduct or the particular circumstances which will be inquired into at the adjudicatory proceedings. See In re Dennis, 291 So. 2d 731, 733 (Miss. 1974); see also In re M.R.L., 488 So. 2d 788, 792-93 (Miss. 1986) (holding that children expressly charged as children in need of supervision could not be found, absent an amendment to the petition, neglected children). The youth court is a court of statutory and limited jurisdiction, and the facts vesting jurisdiction should be shown affirmatively. See Monk v. State, 116 So. 2d 810, 811 (Miss. 1960). A petition charging delinquency is to include the statute or ordinance which the child is alleged to have violated. See In re R.T., 520 So. 2d 136, 137 (Miss. 1988).

Rule 20(a)(5), -(b)(5), -(c)(5). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-455 (2008).

Rule 20(a)(6). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-455 (2008).

Rule 20(a)(7), -(b)(6), -(c)(6). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-457 (2008).

Rule 20(a)(8), -(b)(7), -(c)(7). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-459 (2008).

(Amended effective December 1, 2016)

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 21. Proper venue.

(a) *Delinquency and child in need of supervision proceedings.* If a child is alleged to be a delinquent child or a child in need of supervision, the proceedings shall be commenced in any county where any of the alleged acts are said to have occurred. After adjudication, the youth court may, in the best interest of the child, transfer the case at any stage of the proceeding for disposition to the county where the child resides or to a county where a youth court has previously acquired jurisdiction.

(b) *Child protection proceedings.* If a child is alleged to be an abused or neglected child, the proceedings shall be commenced in the county where the child's custodian resides or in the county where the child is present when the report is made to the intake unit. (Adopted effective January 8, 2009.)

COMMENT

Rule 21(a). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-155(1) (2008).

Rule 21(b). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-155(2) (2008).

Rule 22. Summons.

(a) *Adjudication hearings.*

(1) *Persons summoned.* When a petition has been filed and the date of hearing has been set by the youth court, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child; and any other person whom the court deems necessary. The clerk does not need to issue summons to:

(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and

(ii) who has received sufficient notice of the time, date, place and purpose of the adjudication hearing.

(2) *Form.* The form of the summons shall be pursuant to Section 43-21-503 of the Mississippi Code.

Additionally, the following notice shall be placed in capital letters at the bottom of the summons:

A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD SHALL BE A PARTY TO THIS CASE PURSUANT TO THE MISSISSIPPI YOUTH COURT LAW. A PERSON MADE A PARTY TO THIS CASE MAY BE REQUIRED: TO PAY FOR THE SUPPORT OF THE CHILD PLACED IN CUSTODY OF ANY PERSON OR AGENCY INCLUDING ANY NECESSARY MEDICAL TREATMENT PURSUANT TO SECTION 43-21-615 OR SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY FOR COURT ORDERED MEDICAL AND OTHER EXAMINATIONS AND TREATMENT OF A CHILD, FOR REASONABLE ATTORNEY'S FEES AND COURT COSTS, AND FOR OTHER EXPENSES FOUND NECESSARY OR APPROPRIATE IN THE BEST INTEREST OF THE CHILD PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO PAY DAMAGES OR RESTITUTION AND TO PARTICIPATE IN A COUNSELING PROGRAM OR OTHER SUITABLE FAMILY TREATMENT PROGRAM PURSUANT TO SECTION 43-21-619 OF THE MISSISSIPPI CODE; TO RECEIVE COUNSELING AND PARENTING CLASSES PURSUANT TO SECTION 43-21-605 OF THE MISSISSIPPI CODE; TO DO OR OMIT TO DO ANY ACT DEEMED REASONABLE AND NECESSARY FOR THE WELFARE OF THE CHILD PURSUANT TO SECTION 43-21-617 OF THE MISSISSIPPI CODE.

(3) *Manner of service.*

(i) *Who may serve summons.* Service of summons shall be made by a sheriff, deputy sheriff, or any other person appointed by the youth court judge. Any person appointed to serve summons shall, for such purpose, be an officer of the youth court.

(ii) *Notice of time, date, and place.* Notice of the time, date, place and purpose of any hearing other than adjudicatory and transfer hearings shall be given to all parties in person in court or by mail, or in any other manner as the youth court may direct.

(iii) *If parent, guardian, or custodian exercising parental responsibilities resides and can be located within the state.* Service of summons shall be made personally by delivery of a copy of the summons with a copy of the petition in a sealed envelope attached to the summons. A child may be served in the same manner as an adult. Service of the summons and petition, motions, notices and all other papers upon a child who has not reached his/her fourteenth birthday shall be effectuated by making service upon the child's parent, guardian or custodian and guardian ad litem, if any.

(iv) *If parent, guardian, or custodian exercising parental responsibilities does not reside or cannot be located within the state.* If the parent, guardian, or custodian exercising parental responsibilities does not reside within the state or cannot be located therein, the clerk shall issue summons to the guardian ad litem. If the name and post office address of the parent or guardian who does not reside within the state or cannot be located therein can be ascertained, the clerk shall mail by "certified mail" ten (10) days before the date set for the hearing a copy of the summons with a copy of the petition attached to the summons to such parent or guardian. The clerk shall note the fact of such mailing upon the court docket. Ten (10) days after the summons has been mailed, the court may take jurisdiction as if summons had been personally served as herein provided.

(4) *Time.* Summons shall be served not less than three (3) days before the date set for the adjudicatory hearing of proceedings concerning the child.

(5) *Waiver of summons by a party other than the child.* Service of summons on a party other than the child may be waived by that party by written stipulation or by voluntary appearance at the hearing. In the case of written stipulation or voluntary appearance, the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court. At the time of the waiver, a copy of the petition shall be given to the party.

(6) *Waiver of three (3) days' time before hearing by a child served with process.* If a child is served with process, the child may waive the three (3) days' time before the hearing, and the youth court may, in its discretion, proceed to a hearing regardless of the date set for the hearing if all other parties are properly before the youth court and the youth court finds all of the following: the child fully understands his/her rights and fully understands the potential consequences of the hearing; the child voluntarily, intelligently, and knowingly waives his/her rights to three (3) days' time before the hearing; the child is effectively represented by counsel; and the child has had in fact sufficient time to prepare.

(7) *Enforcement.* Any person summoned who fails to appear without reasonable cause may be proceeded against for contempt of court. In case the summons cannot be served or the parties served with summons fail to obey the same, or in any case when it shall be made to appear to the youth court that the service of summons will be ineffectual or the welfare of a child requires that the child be brought forthwith into the custody of the youth court, a warrant or custody order may be issued against the parent, parents, guardian or custodian or against the child.

(b) *Disposition hearings.* Service of summons for disposition hearings shall be made pursuant to Rule 22(a) of these rules. The clerk does not need to issue summons to:

(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and

(ii) who has received sufficient notice of the time, date, place and purpose of the disposition hearing.

(c) *Modification of disposition hearings.* Service of summons for modification of disposition hearings shall be made pursuant to Rule 22(a) of these rules. The clerk does not need to issue summons to:

(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and

(ii) who has received sufficient notice of the time, date, place and purpose of the modification hearing.

(d) *Permanency hearings.* Service of summons for permanency hearings shall be made pursuant to Rule 29(b) of these rules.

(e) *Permanency review hearings.* Service of summons for permanency review hearings shall be made pursuant to Rule 31(b) of these rules. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

Rule 22(a)(1). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-501 (2008).

Persons who should always be present at the adjudication hearing in abuse and neglect cases include: "judge or judicial officer; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 52 (1995). Other persons whose presence may be needed at the permanency hearing include: "age-appropriate children; extended family members; adoptive parents; judicial case management staff; service providers; other witnesses." Id.

Rule 22(a)(2). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-503 (2008).

Rule 22(a)(3). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-505 (2008).

Due process requires that the child and the parents or guardian receive notice. See Application of Gault, 387 U.S. 1, 33-34 (1967) ("[Due process of law] does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet."); In re Litdell, 232 So.2d 733, 735 (Miss. 1970) ("Due process requires only that reasonable notice be given."); Hopkins v. Youth Court, 227 So. 2d 282, 284 (Miss. 1969) ("The youth court is without jurisdiction unless the parents or guardian if available, be summoned as required by statute.").

Rule 22(a)(4), -(5), -(6). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-507 (2008).

A child cannot waive due process required by law. See In re Edwards, 298 So. 2d 703, 704 (Miss. 1974) ("The notice to the parents may be waived by them, but not process on the minor.").

Rule 22(a)(7). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-509 (2008).

Rule 22(b), -(c). — These provisions comport with the statutory procedures. See Miss. Code Ann. §§ 43-21-501 to -507 (2008).

Persons who should always be present at the disposition hearing of a child adjudicated abused or neglected include: "judge or judicial officer; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 63 (1995). Other persons whose presence may be needed at the disposition hearing include: "age-appropriate children; extended family members; adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officer; other witnesses." Id.

(Amended effective December 1, 2016)

FORMS

Editor's Note. — Deleted effective December 1, 2016.

Rule 23. Transfer of cases.

(a) *Transfers from youth court.* Procedures for transferring cases from youth court to criminal court shall be conducted pursuant to Section 43-21-157 of the Mississippi Code.

(b) *Transfers to youth court.* Procedures for transferring cases from other courts to youth court shall be conducted pursuant to Section 43-21-159 of the Mississippi Code.

(c) *Removal by the youth court of certain criminal misdemeanor offenses.* Unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult, and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67-3-70 of the Mississippi Code, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of the Mississippi Youth Court Law. Such does not apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

(d) *Stay of execution by the youth court of certain criminal misdemeanor offenses.* After conviction and sentence of any child by any court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration.

(e) *Youth court may order the destruction of certain records maintained by a criminal court.* The youth court shall have the power to order and supervise the destruction of any records involving children maintained by a criminal court in accordance with Section 43-21-265 of the Mississippi Code.

(f) *Expungement of certain records in other courts.* The youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43-21-265 of the Mississippi Code, and to order a refund of fines and costs. Such does not apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

Cross References — Implied Consent Law, see § 63-11-1 et seq.

COMMENT

Rule 23(a). — This provision adopts the statutory procedures for transferring cases from youth court to criminal courts. Such procedures require conducting a bifurcated hearing and making specific statutory findings. See Buck v. State, 838 So. 2d 256, 261 (Miss. 2003) ("[T]he statutory youth court transfer procedure is comprehensive and must be followed."); Hicks v. State, 870 So. 2d 1238, 1240 (Miss. Ct. App. 2004) ("The [transfer] order entered in this matter fully complied with the statutes. . . . Accordingly, [the] claim that the youth court did not have the necessary jurisdiction to transfer the case to circuit court is without merit."); Biggs v. State, 741 So. 2d 318, 331 (Miss. Ct. App. 1999) ("[B]efore transferring a juvenile for trial in the circuit courts, the youth court must first conduct a bifurcated hearing and (1) determine . . . [that] probable cause exists to believe that the child committed the alleged offense; and (2) find by clear and convincing evidence that there are no reasonable prospects of rehabilitation within the juvenile system.").

This provision adopts the statutory procedures for transferring cases from other courts to youth court. These procedures require that the circuit court determine whether the transfer is in the best interest of the child and in the interest of justice. See State v. U.G., 726 So. 2d 151, 155 (Miss. 1998) ("Neither the best interest of the child nor 'the interest of justice' overrides the other, but they can be separate interests and must be given full review by the circuit court."). But cf. Horne v. State, 825 So. 2d 627, 634 (Miss. 2002) ("The acts of the perpetrators demonstrate a clear lack of conscience. . . . We find that, even though the circuit court erred by not considering the two factors under State v. U.G., this error was harmless."). A transfer to youth court may be made at any stage of the proceedings prior to the attachment of jeopardy. Hoops v. State, 681 So. 2d 521, 536 (Miss. 1996). By statute, "[n]o offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court." Miss. Code Ann. 43-21-159(7) (2008); see also Cockrell v. State, 811 So. 2d 305, 307-08 (Miss. Ct. App. 2001) (holding that Section 43-21-159(7) prohibited transfer of a firearm offense committed by sixteen-year-old to youth court); Wash v. State, 807 So. 2d 452, 459 (Miss. Ct. App. 2001) (holding that the issue of the child's age at the time of the event is critical in determining whether a transfer is prohibited under Section 43-21-159(7)).

Rule 23(c). — This provision comports with the statutory procedures. See Miss. Code Ann. 43-21-159(1) (2012).

Rule 23(d) through (f). — These provisions comport with the statutory procedures. See Miss. Code Ann. 43-21-159(2) (2008).

(Amended effective December 1, 2016.)

Rule 24. Adjudication hearings.

(a) *Delinquency and child in need of supervision proceedings.*

(1) *Time of hearing.*

(i) *If child is not in detention.* Unless the hearing is continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, an adjudicatory hearing shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a delinquent child or a child in need of supervision. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.

(ii) *If child is in detention.* If the child is in detention, the hearing shall be held as soon as possible but not later than twenty-one (21) days after the child is first detained by the court unless the hearing be postponed: upon motion of the child; where process cannot be completed; or upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from detention.

(2) *Acceptance of admissions.* At any time after the petition has been filed, all parties to the cause may appear before the judge and admit the allegations of the petition. The judge may accept this admission as proof of the allegations if the judge finds that: the parties making the admission fully understand their rights and fully understand the potential consequences of their admission to the allegations; the parties making the admission voluntarily, intelligently and knowingly admit to all facts necessary to constitute a basis for court action under Mississippi's Youth Court Law; the parties making the admission have not in the reported admission to the allegation set forth facts that, if found to be true, constitute a defense to the allegation; and the child making the admission is effectively represented by counsel.

(3) *Plea bargaining.* Under no circumstances shall the party or the prosecutor engage in discussion for the purpose of agreeing to exchange concessions by the prosecutor for the party's admission to the petition.

(4) *Conduct of hearing.* All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Adjudication hearings shall be conducted:

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and

(iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

(5) *Verifying information and explaining procedures and rights.* At the beginning of each adjudicatory hearing, the court shall: verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other; ascertain whether all necessary parties are present and identify all persons participating in the hearing; ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance of the notice requirements in accordance with Section 43-21-507 of the Mississippi Code; explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and explain to the parties:

(i) the right to counsel;

(ii) the right to remain silent;

(iii) the right to subpoena witnesses;

(iv) the right to confront and cross-examine witnesses; and

(v) the right to appeal, including the right to a transcript of the proceedings.

Additionally, if the child is an alleged child in need of supervision, the court shall explain the procedures set forth in Rule 10 of these rules for holding the child in secure juvenile detention for a violation of a valid court order.

The court should then ascertain whether the parties before the court are represented by counsel. If the party wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of the party's own choosing. If an indigent child does not have counsel, the court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with the appointed counsel.

(6) *Evidence.* In arriving at its adjudicatory decision, the court shall consider only evidence which has been formally admitted at the adjudicatory hearing. The following evidentiary procedures apply to these hearings:

(i) All testimony shall be under oath and may be in narrative form.

(ii) The court shall admit any evidence that would be admissible in a criminal proceeding.

(iii) An out-of-court admission or confession by the child, even if otherwise admissible, shall be insufficient to support an adjudication that the child is a delinquent child unless the admission or confession is corroborated in whole or in part by other competent evidence.

(iv) Members of the youth court staff may appear as witnesses except that no admission or confession made to a member of the youth court staff may be testified to at a youth court hearing.

(v) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(7) *Opportunity to present a closing argument.* At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument pursuant to Section 43-21-559(4) of the Mississippi Code.

(8) *Standard of proof.* If the court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision. Where the petition alleges that the child is a delinquent child, the youth court may, as an alternative, enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.

(9) *Terminating proceedings.* The court may at any time terminate the proceedings and dismiss the petition if the court finds such action to be conducive to the welfare of the child and in the best interests of the state.

(b) *Child protection proceedings.*

(1) *Time of hearing.*

(i) *If child is not in shelter.* Unless continued upon a showing of good cause or the person who is a subject to the cause has admitted the allegations of the petition, the adjudicatory hearing of a child who is not in shelter shall be held within ninety (90) days after the filing of the petition to determine whether there is legally sufficient evidence to find that the child is a neglected or an abused child. If the adjudicatory hearing is not held within the ninety (90) days, the petition shall be dismissed with prejudice.

(ii) *If child is in shelter.* The adjudicatory hearing of a child who is in shelter shall be held as soon as possible but not later than thirty (30) days after the child is first taken into custody unless the hearing is postponed: upon motion of the child; where process cannot be completed; or upon a judicial finding that a material witness is not presently available. If the adjudicatory hearing is not held or postponed for the aforesaid reasons, the child may be released from shelter.

(2) *Where parties do not contest the allegations in the petition.* At any time after the petition has been filed, all parties to the cause may appear before the judge and voluntarily choose not to contest the allegations in the petition. In such instances, the court may adjudicate the child as a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, if there is a sufficient factual basis to sustain the charge(s) and the court has verified the information and explained the rights and procedures required pursuant to Rule 24(b)(4) of this rule.

(3) *Conduct of hearing.* All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Adjudication hearings shall be conducted:

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court; and

(iv) with a complete record of all evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel, which shall include the foster parent(s) and the residential child caring agency providing care for the child. The court may exclude the attendance of a child from an adjudication hearing in neglect and abuse cases with consent of the child's counsel.

(4) *Verifying information and explaining procedures and rights.* At the beginning of each adjudicatory hearing, the court shall: verify the name, age and residence of the child who is the subject of the cause and ascertain the relationship of the parties, each to the other; ascertain whether all necessary parties are present and identify all persons participating in the hearing; ascertain whether the notice requirements have been complied with and, if not, whether the affected parties intelligently waived compliance of the notice requirements in accordance with Section 43-21-507 of the Mississippi Code;

explain to the parties the purpose of the hearing and the possible dispositional alternatives thereof; and explain to the parties:

(i) the right to counsel;
(ii) the right to remain silent;
(iii) the right to subpoena witnesses;
(iv) the right to confront and cross-examine witnesses; and
(v) the right to appeal, including the right to a transcript of the proceedings.

The court should then ascertain whether the parties before the court are represented by counsel. If the party wishes to retain counsel, the court shall continue the hearing for a reasonable time to allow the party to obtain and consult with counsel of the party's own choosing. If an indigent child does not have counsel, the court shall appoint counsel to represent the child and shall continue the hearing for a reasonable time to allow the child to consult with the appointed counsel.

(5) *Evidence.* In arriving at its adjudicatory decision, the court shall consider only evidence which has been formally admitted at the adjudicatory hearing. The following evidentiary procedures apply to these hearings:

(i) All testimony shall be under oath and may be in narrative form.

(ii) The court shall admit any evidence that would be admissible in a civil proceeding.

(iii) Members of the youth court staff may appear as witnesses except that no admission or confession made to a member of the youth court staff may be testified to at a youth court hearing.

(iv) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(6) *Opportunity to present closing argument.* At the conclusion of the evidence, the court shall give the parties an opportunity to present closing argument.

(7) *Standard of proof.* If the court finds from a preponderance of the evidence that the child is a neglected child or an abused child, the youth court shall enter an order adjudicating the child to be a neglected child or an abused child.

(8) *Terminating proceedings.* The court may at any time terminate the proceedings and dismiss the petition if the court finds such action to be conducive to the welfare of the child and in the best interests of the state. (Adopted effective January 8, 2009.)

COMMENT

Rule 24(a)(1), -(b)(1). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-551 (2008).

Our court has strictly construed Section 43-21-551 of the Mississippi Code, the basis for Rule 24(a)(1) and (b)(1). See, e.g., D.D.B. v. Jackson County Youth Court, 816 So. 2d 380, 383 (Miss. 2002) ("[Section 43-21-551(1)] does not say that an order must be entered within the ninety (90) day period. The statute only says that an adjudicatory hearing shall be held within ninety (90) days or it shall be dismissed, unless the hearing is continued upon a showing of good cause."); In re C.R., 604 So. 2d 1079, 1081 (Miss. 1992) ("The [adjudicatory] proceeding's postponement . . . is without consequence since § 43-21-551 provides that a hearing may be continued upon a showing of good cause.").

Rule 24(a)(2), -(b)(2). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-553 (2008)

Rule 24(a)(3). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-555 (2008).

Rule 24(a)(4), -(b)(3). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-203 (2008).

All cases involving children must be heard separately from the trial of cases involving adults. This is consistent with the confidential and rehabilitative nature of youth court proceedings. An effective method to assure compliance is for the court to schedule its adult cases and youth court proceedings on separate days.

In child protection proceedings, the foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the adjudication hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents). If a party invokes Rule 615 of the Mississippi Rules of Evidence, the court should take the testimony of the foster parent(s) and the representative of the residential child caring agency prior to taking the testimony of other witnesses.

Rule 24(a)(4)(i), -(b)(3)(i). — Adjudicatory hearings are conducted without a jury. See McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971) ("[T]rial by jury in the juvenile court's adjudicative stage is not a constitutional requirement."); Hopkins v. Youth Court, 227 So. 2d 282, 285 (Miss. 1969) ("[W]e hold that the [youth] court did not err in denying a jury trial.").

Rule 24(a)(4)(ii), -(b)(3)(ii). — Adjudication hearings are conducted under the rules of evidence and rules of court as may comply with constitutional standards. See M.R.E. 101 ("These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101."). See generally Application of Gault, 387 U.S. 1 (1967); Patterson v. Hopkins, 350 F. Supp. 676, 683 (N.D. Miss. 1972) ("Gault decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of ""the essentials of due process and fair treatment" "").

Rule 24(a)(5), -(b)(4). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-557 (2008).

At the beginning of each adjudicatory hearing, the court is required to verify certain information and to explain certain procedures and rights. See In re J.N., 915 So. 2d 1076, 1079-80 (Miss. Ct. App. 2005) ("A child in youth court proceedings is entitled to certain due process rights that cannot be ignored. At the beginning of an adjudicatory hearing, the youth court must explain to the parties the purpose of the hearing, the possible disposition alternatives, the right to counsel, the right to remain silent, the right to subpoena witnesses, the right to cross-examine witnesses testifying against him, and the right to appeal.").

Rule 24(a)(6), -(b)(5). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-559 (2008).

M.R.E. 101 provides: — These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

M.R.E. 1101(b) provides in part: — Rules Inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under rule 104(a).

. . . .

(3) Miscellaneous Proceedings. . . . probable cause hearings in . . . youth court cases; . . . disposition hearings; granting or revoking probation; issuance of war-

rants for arrest, . . . and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.

Rule 24(a)(7), -(b)(6). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-559(4) (2008).

Rule 24(a)(8), -(b)(7). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-561 (2008).

The burden of proof in delinquency and children in need of supervision proceedings is proof beyond a reasonable doubt. See In re Winship, 397 U.S. 358, 368 (1970); L.M. v. State, 600 So. 2d 967, 969 (Miss. 1992); In re Dennis, 291 So. 2d 731, 733 (Miss. 1974). The burden of proof in child protection proceedings is proof by a preponderance of the evidence. See E.S. v. State, 567 So. 2d 848, 850 (Miss. 1990).

Rule 24(a)(9), -(b)(8). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-557(4) (2008).

Rule 25. Adjudication orders.

(a) *Delinquency and child in need of supervision proceedings.*

(1) *Content.* An adjudication order shall recite that the child has been adjudicated a delinquent child or a child in need of supervision, as applicable, but in no event shall it recite that the child has been found guilty. No order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a delinquent child or a child in need of supervision. Any order of adjudication shall be confidential as provided by Section 43-21-561(5) of the Mississippi Code and as otherwise provided by law.

(2) *Two or more offenses alleged in same petition.* On each count admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that count within its adjudicatory order.

(b) *Child protection proceedings.*

(1) *Content.* An adjudication order shall recite that the child has been adjudicated a neglected child or an abused child or a sexually abused child or a dependent child, as applicable, but in no event shall it recite that the child has been found guilty. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a neglected child or an abused child or a sexually abused child or a dependent child. Any order of adjudication shall be confidential as provided by Section 43-21-561(5) of the Mississippi Code and as otherwise provided by law.

(2) *Two or more children subject of the same petition.* On each charge of abuse and neglect in the same petition admitted or proved in accordance with these rules, the court shall enter a separate adjudication on that charge within its adjudicatory order. (Adopted effective January 8, 2009.)

COMMENT

Rule 25(a)(1), -(b)(1). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-561(5) (2008).

Rule 25(a)(2), -(b)(2). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-455 (2008).

(Amended effective December 1, 2016).

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 26. Disposition hearings.

(a) *Delinquency proceedings.*

(1) *Time of hearing.* If the child has been adjudicated a delinquent child, the court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings. If the child has been taken into custody, a disposition hearing shall be held within fourteen (14) days after the adjudicatory hearing unless good cause be shown for postponement.

(2) *Conduct of hearing.* All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Disposition hearings shall be conducted:

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court;

(iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

(3) *Evidence.* In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:

(i) All testimony shall be under oath unless waived by all parties and may be in narrative form.

(ii) The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.

(iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(iv) The court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in delinquency cases with consent of the child's counsel.

(4) *Explaining the purpose of the dispositional hearing.* At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

(5) *Opportunity to present closing argument.* At the conclusion of the evidence, the youth court shall give the parties an opportunity to present closing argument.

(6) *Factors for consideration.* If the child has been adjudicated a delinquent child, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

(i) the nature of the offense;

(ii) the manner in which the offense was committed;

(iii) the nature and number of a child's prior adjudicated offenses;

(iv) the child's need for care and assistance;

(v) the child's current medical history, including medication and diagnosis;

(vi) the child's mental health history, which may include, but not be limited to, the Massachusetts Youth Screening Instrument version 2 (MAYSI-2);

(vii) copies of the child's cumulative record from the last school of record, including special education records, if applicable;

(viii) recommendation from the school of record based on areas of remediation needed;

(ix) disciplinary records from the school of record; and records of disciplinary actions outside of the school setting.

Additionally, pursuant to Section 43-27-25 of the Mississippi Code, no child who is seriously handicapped by mental illness or retardation shall be referred to a state-supported training school.

(7) *Entering disposition order.* After consideration of all the evidence and the relevant factors, the court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

(b) *Child in need of supervision proceedings.*

(1) *Time of hearing.* If the child has been adjudicated a child in need of supervision, the court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the adjudicatory hearing. The disposition hearing may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings. If the child has been taken into custody, a disposition hearing shall be held within fourteen (14) days after the adjudicatory hearing unless good cause be shown for postponement.

(2) *Conduct of hearing.* All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Disposition hearings shall be conducted:

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court;

(iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel.

(3) *Evidence.* In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:

(i) All testimony shall be under oath unless waived by all parties and may be in narrative form.

(ii) The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.

(iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(iv) The court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in child in need of supervision cases with consent of the child's counsel.

(4) *Explaining the purpose of the dispositional hearing.* At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

(5) *Opportunity to present closing argument.* At the conclusion of the evidence, the youth court shall give the parties an opportunity to present closing argument.

(6) *Factors for consideration.* If the child has been adjudicated a child in need of supervision, before entering a disposition order, the youth court should consider, among others, the following relevant factors:

(i) the nature and history of the child's conduct;

(ii) the family and home situation; and

(iii) the child's need of care and assistance.

(7) *Entering disposition order.* After consideration of all the evidence and the relevant factors, the court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a child in need of supervision. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies for the disposition order.

(c) *Child protection proceedings.*

(1) *Time of hearing.* If the child has been adjudicated a neglected child or an abused child, the youth court shall immediately set a time and place for a disposition hearing which shall be separate, distinct and subsequent to the

adjudicatory hearing. The disposition hearing may be held immediately following the adjudicatory hearing unless a continuance is necessary to allow the parties to prepare for their participation in the proceedings. If the child has been taken into custody, a disposition hearing shall be held within fourteen (14) days after the adjudicatory hearing unless good cause be shown for postponement.

(2) *Conduct of hearing.* All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults. Disposition hearings shall be conducted:

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court;

(iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

Any person found by the court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel, which shall include the foster parent(s) and the residential child caring agency providing care for the child.

(3) *Evidence.* In arriving at its dispositional decision, the court shall consider only evidence presented at the disposition hearing. The following evidentiary procedures apply to these disposition hearings:

(i) All testimony shall be under oath unless waived by all parties and may be in narrative form.

(ii) The court may consider any evidence that is material and relevant to the disposition of the cause, including hearsay and opinion evidence.

(iii) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence to subpoena, confront and examine the person who prepared or furnished data for the report and to introduce evidence controverting the contents of the report.

(iv) The court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in abuse and neglect cases with consent of the child's counsel.

(4) *Explaining the purpose of the dispositional hearing.* At the beginning of each disposition hearing, the judge shall inform the parties of the purpose of the hearing.

(5) *Opportunity to present closing argument.* At the conclusion of the evidence, the youth court shall give the parties an opportunity to present closing argument.

(6) *Factors to be considered.* If the child has been adjudicated a neglected child or an abused child, before entering a disposition order, the youth court shall consider, among others, the following relevant factors:

(i) the child's physical and mental conditions;

(ii) the child's need of assistance;

(iii) the manner in which the parent, guardian or custodian participated in, tolerated or condoned the abuse, neglect or abandonment of the child;

(iv) the ability of a child's parent, guardian or custodian to provide proper supervision and care of a child; and

(v) relevant testimony and recommendations, where available, from the foster parent of the child, the grandparents of the child, the guardian ad litem of the child, representatives of any private care agency that has cared for the child, the family protection worker or family protection specialist assigned to the case, and any other relevant testimony pertaining to the case.

(7) *Entering disposition order.* After consideration of all the evidence and the relevant factors, the court shall enter a disposition order that shall not recite any of the facts or circumstances upon which the disposition is based, nor shall it recite that a child has been found guilty; but it shall recite that a child is found to be a neglected child or an abused child. Upon a written motion by a party, the court shall make written findings of fact and conclusions of law upon which it relies for the disposition order. (Adopted effective January 8, 2009.)

COMMENT

Rule 26(a)(1), -(b)(1), -(c)(1). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-601 (2008).

The disposition hearing is separate, distinct and subsequent to the adjudicatory hearing. See In re J.E.J., 419 So. 2d 1032, 1034 (Miss. 1982) ("Here, the court could have adjourned for fifteen (15) minutes, the entire record could have been offered in evidence and he could then have entered a disposition order."). However, unless a continuance is necessary, the court may conduct the disposition hearing immediately after the adjudicatory hearing. See In re L.C.A., 938 So. 2d 300, 306 (Miss. Ct. App. 2006) ("L.C.A. neither requested a continuance nor argued that a continuance was necessary. Accordingly, we find no merit to the issue [that the youth court failed to comply with Section 43-21-601].").

Rule 26(a)(2), -(b)(2), -(c)(2). — These provisions comport with the statutory procedures. See Miss. Code Ann. §§ 43-21-203, -603 (2008).

All cases involving children must be heard separately from the trial of cases involving adults. This is consistent with the confidential and rehabilitative nature of youth court proceedings. An effective method to assure compliance is for the court to schedule its adult cases and youth court proceedings on separate days.

In child protection proceedings, the foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the disposition hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

Rule 26(a)(3), -(b)(3), -(c)(3). — The Mississippi Rules of Evidence do not apply to dispositional hearings. See M.R.E. 1101(b)(3); S.C. v. State, 795 So. 2d 526, 529 (Miss. 2001) ("The youth court may hear any evidence that is material and relevant to [the] disposition of the cause, including hearsay and opinion evidence."); In re R.D., 658 So. 2d 1378, 1383-84 (Miss. 1995) ("Dispositional hearings in youth courts are very informal, allowing for hearsay testimony as well as reports from various individuals or agencies who have information concerning the well being and 'best interest' of the minors before the court.").

M.R.E. 101 provides: — These rules govern proceedings in the courts of the State of Mississippi to the extent and with the exceptions stated in rule 1101.

M.R.E. 1101(b) provides in part: — Rules Inapplicable. Except for the rules pertaining to privileges, these rules do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the

issue is to be determined by the court under rule 104(a)

. . .

(3) Miscellaneous Proceedings. . . . probable cause hearings in . . . youth court cases; . . . disposition hearings; granting or revoking probation; issuance of warrants for arrest, . . . and search warrants; and proceedings with respect to release on bail or otherwise.

(4) Contempt Proceedings. Contempt proceedings in which the court may act summarily.

Rule 26(a)(6), -(b)(6), -(c)(6). — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-603; 43-27-25 (2008).

Rule 26(a)(7), -(b)(7), -(c)(7). — These provisions comport with the statutory procedures. See Miss. Code Ann. § 43-21-603 (2008).

Rule 27. Disposition orders.

(a) *Delinquency proceedings.*

(1) *Authorized dispositions.* In delinquency cases, the disposition order may include any of the alternatives as set forth in Section 43-21-605(1) of the Mississippi Code. Additionally, the court may order:

(i) drug testing pursuant to Section 43-21-605(8) of the Mississippi Code;

(ii) any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to Section 43-21-611 of the Mississippi Code;

(iii) parents or guardians to pay for the support of the child placed in custody of any person or agency (other than the custody of a state training school), including any necessary medical treatment, pursuant to Section 43-21-615(2) of the Mississippi Code;

(iv) parents or guardians of a child placed in a state-supported training school to receive counseling and parenting classes pursuant to Section 43-21-605(4) of the Mississippi Code;

(v) any person found encouraging, causing, or contributing to the delinquency of the child to do or omit to do any act deemed reasonable and necessary for the welfare of the child pursuant to Section 43-21-617 of the Mississippi Code;

(vi) financially able parents to pay for court ordered medical and other examinations and treatment of a child, for reasonable attorney's fees and court costs, and for other expenses found necessary or appropriate in the best interest of the child pursuant to Section 43-21-619(1) of the Mississippi Code;

(vii) parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to Section 43-21-619(2) of the Mississippi Code;

(viii) enrollment or reenrollment of any compulsory-school-age child in school (but in no event may a child who has been expelled from a school district for commission of a "violent act", as such term is defined under Section

43-21-605(8) of the Mississippi Code, be placed in another school district), and further order appropriate education services, pursuant to Section 43-21-621 of the Mississippi Code.

(2) *Two or more offenses alleged in same petition.* The court shall enter a separate disposition on each adjudicated count. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current disposition(s), as it deems in the best interest of the child and in the interest of justice.

(3) *Additional matters pertaining to delinquency orders:*

(i) *Admission packet to be provided to training school.* If the disposition ordered by the court includes placing the child in the custody of a training school, an admission packet shall be prepared for the child and provided to the training school pursuant to Section 43-21-603(8) of the Mississippi Code. The admittance of any child to a training school shall take place between the hours of 8:00 a.m. and 3:00 p.m. on designated admission days.

(ii) *Detention facility to comply with educational services requirement.* If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services requirements of Section 43-21-321 of the Mississippi Code.

(iii) *School to be notified if child is to miss school due to other placement.* If a disposition order requires that a child miss school due to other placement, the court shall notify a child's school while maintaining the confidentiality of the court process pursuant to Section 43-21-605(2) of the Mississippi Code.

(iv) *Institution or agency to provide information to court.* Any institution or agency to which a child has been committed shall give to the court any information concerning the child as the court may at any time require.

(v) *Fines to be paid in the general fund, exception.* Any fines levied under Mississippi's Youth Court Law shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.

(b) *Child in need of supervision proceedings.*

(1) *Authorized dispositions.* In children in need of supervision cases, the disposition order may include any of the alternatives as set forth in Section 43-21-607(1) of the Mississippi Code. Additionally, the court may order:

(i) drug testing pursuant to Section 43-21-607(2) of the Mississippi Code;

(ii) any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to Section 43-21-611 of the Mississippi Code;

(iii) parents or guardians to pay for the support of the child placed in custody of any person or agency, including any necessary medical treatment, pursuant to Section 43-21-619(1) of the Mississippi Code;

(iv) financially able parents to pay for court ordered medical and other examinations and treatment of a child, for reasonable attorney's fees and court costs, and for other expenses found necessary or appropriate in the best interest of the child pursuant to Section 43-21-619(1) of the Mississippi Code;

(v) parents, guardians or custodians who exercise parental custody or control of a child who has willfully or maliciously caused personal injury or damaged or destroyed property to pay damages or restitution and to participate in a counseling program or other suitable family treatment program for the purpose of preventing future occurrences pursuant to Section 43-21-619(2) of the Mississippi Code;

(vi) enroll or reenroll any compulsory-school-age child in school, and further order appropriate education services, pursuant to Section 43-21-621 of the Mississippi Code.

(2) *Two or more offenses alleged in same petition.* The court shall enter a separate disposition on each adjudicated count. The court may order the disposition of any count to run concurrent or consecutive to any other count(s) or current disposition(s), as it deems in the best interest of the child and in the interest of justice.

(c) *Child protection proceedings.*

(1) *Authorized dispositions.* In neglect and abuse cases, the disposition order may include any of the alternatives as set forth in Section 43-21-609 of the Mississippi Code. Disposition orders shall comply, as applicable, with the requirements set forth in Sections 43-21-603(7) and 43-21-609(f) and (g) of the Mississippi Code. Additionally, the court may order:

(i) any appropriate disposition designed for the treatment and care of a child in need of special care, including civil commitment to a state institution providing care for that disability or infirmity, pursuant to Section 43-21-611 of the Mississippi Code;

(ii) parents or guardians to pay for the support of the child placed in custody of any person or agency, including any necessary medical treatment pursuant to Section 43-21-619(1) of the Mississippi Code;

(iii) any person found encouraging, causing, or contributing to the abuse or neglect of the child to do or omit to do any act deemed reasonable and necessary for the welfare of the child pursuant to Section 43-21-617 of the Mississippi Code;

(iv) financially able parents to pay for court ordered medical and other examinations and treatment of a child, for reasonable attorney's fees and court costs, and for other expenses found necessary or appropriate in the best interest of the child pursuant to Section 43-21-619(1) of the Mississippi Code;

(v) enroll or reenroll any compulsory-school-age child in school, and further order appropriate education services, pursuant to Section 43-21-621 of the Mississippi Code.

(2) *Two or more children subject of the same petition.* The court shall enter a separate disposition on each adjudicated charge.

(d) *Other matters pertaining to disposition orders.*

(1) *Transportation costs.* The costs of transporting any child to any institution or agency shall be pursuant to Section 43-21-615(1) of the Mississippi Code. In the case of a female child, the court shall designate some suitable woman to accompany her to the institution or agency.

(2) *Mississippi Crime Victims' Bill of Rights.* The youth court judge shall comply with the Mississippi Crime Victims' Bill of Rights (Miss. Code Ann. § 99-43-1 et seq.) as is applicable to youth courts.

(3) *Registration of Sex Offenders.* The youth court judge shall comply with the Registration of Sex Offenders (Miss. Code Ann. § 45-33-21 et seq.) as is applicable to youth courts. (Adopted effective January 8, 2009; Amended effective December 1, 2016.)

COMMENT

Rule 27(a). — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-605, -611, -615, -617, -619, -621 (2008).

The conditions and terms of a disposition must be reasonable and appropriate. See In re Green, 203 So. 2d 470, 472 (Miss. 1967) ("The Youth Court was amply justified in finding that the condition [of "stay out of trouble"] was valid under the particular facts of this case, and that [the child] had violated it."); K.N.L. v. State, 803 So. 2d 1245, 1249 (Miss. Ct. App. 2002) ("[T]he prohibition against [the child who had shoplifted from] going to the mall or to a [particular] store is reasonable and appropriate."). A court may order parents, guardians, or custodians to pay certain expenses. See, e.g., In re B.D., 720 So. 2d 476, 479 (Miss. 1998) ("In this case, all parties had notice that restitution was being sought, along with the amounts at issue. A hearing was held with counsel for the appellants present and allowed to present argument, cross-examine witnesses and object. This Court finds that the procedure followed by the Youth Court met due process requirements. Section 43-21-619 is not violative of the state or federal constitutions."). Courts are prohibited from committing an offender age eighteen or older to the division of youth services for placement in a state supported training school. See In re L.C.A., 938 So. 2d 300, 307 (Miss. Ct. App. 2006).

Rule 27(b). — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-607, 43-21-611, 43-21-615, 43-21-617, 43-21-619, 43-21-621 (2008).

Rule 27(c). — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-603, 43-21-609, 43-21-611, 43-21-615, 43-21-617, 43-21-619, 43-21-621 (2008).

The polestar consideration in child custody cases is the best interest of the child. See, e.g., In re E.M., 810 So. 2d 596, 600 (Miss. 2002) ("It defies logic to think that parents or relatives who have severely and permanently injured E.M. and have caused the death of her younger brother could be trusted to properly care for and raise E.M. without further incident. . . . [T]he judgment of the youth court judge should be reversed and E.M. should be placed in appropriate foster care."); In re S.M., 739 So. 2d 473, 475 (Miss. Ct. App. 1999) ("The court directed the Department to work with the parties with an ultimate goal of returning [the child] to his family. This action is within the discretion of the court and is not inconsistent with the evidence."). The youth court has no authority to commit a neglected child to training school. See In re Slay, 147 So. 2d 299, 300 (Miss. 1962).

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to disposition orders include:

Pursuant to the United States District Court's Order Regarding the Suicide Prevention Action Plan, youth court judges must review the federal requirements for dispositional hearings for youths that are to be committed to a training school. The Division of Youth Services must have all medical and mental records prior to accepting a youth into a training school. The youth court should review the medical and mental records prior to the youth's commitment. Failure to have the medical and mental records, will result in the youth not being admitted to the training school. See Order Regarding Suicide Prevention Action plan, Civil Action No.: 3:03-cv-1354-HTW-JCS (S. Miss. Apr. 30, 2008).

Editor's Note — (Amended effective December 1, 2016).

Forms

Editor's Note — Deleted effective December 1, 2016.

Rule 28. Modification of disposition orders/annual reviews.

(a) *Delinquency and child in need of supervision proceedings.*

(1) *Modification of orders.* Procedures governing the modification of a disposition order of a delinquent child or a child in need of supervision shall be conducted pursuant to Section 43-21-613(1) and (2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.

(2) *Annual reviews.* Unless the court's jurisdiction has been terminated, all disposition orders for supervision, probation or placement of a child with an individual or an agency shall be reviewed by the court at least annually to determine if continued placement, probation or supervision is in the best interest of the child or the public.

(b) *Child protection proceedings.*

(1) *Modification of orders.* Procedures governing the modification of a disposition order of an abused or neglected child shall be conducted pursuant to Section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.

(2) *Child protection reviews.* Child protection reviews for abused or neglected children shall be conducted pursuant to Rules 29 and 31 of these rules.

(c) *Dependent children.*

(1) *Modification of orders.* Procedures governing the modification of a disposition order of a dependent child shall be conducted pursuant to Section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules.

(2) *Child protection reviews.* Child protection reviews for dependent children shall be conducted pursuant to Rules 29 and 31 of these rules.

(d) *Durable legal custody.*

(1) *Modification of orders.* Procedures governing the modification of a durable legal custody order of a neglected or abused child shall be conducted pursuant to Section 43-21-613(2) of the Mississippi Code. Service of summons for such hearings shall be pursuant to Rule 22(c) of these rules. A durable legal custody order shall not be modified except upon the court finding:

(i) a substantial change in circumstances which has adversely affected the child;

(ii) that the order modifying the durable legal custody order remedies the conditions; and

(iii) that such modification is in the best interest of the child and the interests of justice.

(2) *Permanency review hearings not required.* The requirements of Section 43-21-613 of the Mississippi Code as to durable legal custody review hearings do not apply. Instead, permanency review hearings are not to be conducted unless explicitly ordered by the court. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities, and relieved of physical and legal custody and supervision of the child. (Adopted effective January 8, 2009.)

COMMENT

The youth court has continuing jurisdiction to modify the disposition of a delinquent or child in need of supervision as necessary. See In re Litdell, 232 So. 2d 733, 736 (Miss. 1970) ("The youth court's jurisdiction of a youth adjudged to be delinquent is a continuing one, with continuing power to alter the terms of the probation if, in the best interests of the child, the original arrangement proves inadequate or to have been ill advised."). Any modification is to be of equal or greater precedence which the youth court could have originally ordered. See Miss. Code Ann. § 43-21-613(2) (2008).

The youth court has continuing jurisdiction to modify the disposition of an abused or neglected child as necessary. See In re R.D., 658 So. 2d 1378, 1386 (Miss. 1995) ("Section 43-21-613 provides that orders of the youth court determining the disposition of a child who has been adjudicated neglected, for instance, may be modified in the discretion of the youth court thereafter, as necessary."). Modification of a custody order requires a material change in circumstances and that the modification be in the best interest of the child. See In re V.L.W., 751 So. 2d 1033, 1035 (Miss. 1999). Any modification is to be of equal or greater precedence which the youth court could have originally ordered. See Miss. Code Ann. § 43-21-613(2) (2008).

Rule 28(c). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(c) (2008).

Rule 28(d). — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-609(b), 43-21-613(3)(d) (2008).

Section 43-21-609(b) of the Mississippi Code provides in part: "The requirements of Section 43-21-613 as to disposition review hearings does not apply to those matters in which the court has granted durable legal custody. In such cases, the Department of Human Services shall be released from any oversight or monitoring responsibilities." Granting of durable legal custody, however, does not preclude the court from conducting a review hearing of its order. See In re S.A.M., 826 So. 2d 1266, 1279 (Miss. 2002) ("[T]he intent of durable legal custody is merely to avoid the required annual dispositional reviews by the youth court and constant oversight and monitoring by DHS, not a complete preclusion of the court's jurisdiction, DHS's further involvement or court ordered review hearings as needed."). Durable legal custody is not allowed as an alternative disposition unless the child has been in the physical custody of the proposed durable custodians for at least one year under the supervision of the Department of Human Services. See May v. Harrison County Dep't of Human Servs., 883 So. 2d 74, 82 (Miss. 2004). The granting of durable legal custody does not afford the durable legal custodian any greater rights than those of a foster parent. See Barnett v. Oathout, 883 So. 2d 563, 1279 (Miss. 2004).

Rule 29. Permanency hearings.

(a) *Time of hearing following disposition.*

(1) *When reasonable efforts to maintain child within child's own home are not required.* Where the court has found at the disposition hearing that reasonable efforts to maintain the child within the child's own home are not required, it shall conduct a permanency hearing within thirty (30) days of such finding.

(2) *When reasonable efforts to maintain child within child's own home are required.* Where the court has found at the disposition hearing that reasonable efforts to maintain the child within the child's own home are required, it shall conduct a permanency hearing for any child who has been placed with the Department of Human Services, Division of Family and Children's Services or any other person or public or private agency, other than the child's parent, guardian or custodian, unless a lesser period of time is required under the Mississippi Code, within six (6) months after the earlier of:

(i) an adjudication that the child has been adjudicated abused or neglected; or

(ii) the date of the child's removal from the allegedly abusive or neglectful custodian/parent.

The court may extend the period of time to conduct the hearing for an additional six (6) months upon finding extraordinary and compelling reasons for extending the time period in the best interest of the child.

(3) *Children placed in foster care on or after July 1, 1998.* The court shall conduct a permanency hearing for any child placed in foster care on or after July 1, 1998 within a time period that substantially complies with Section 43-15-13(4) of the Mississippi Code.

(b) *Summons.*

(1) *Persons Summoned.* When the date of the permanency hearing has been set by the youth court, and if necessary to fulfill the notice requirements, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child, except in no event shall summons issue to the parent(s) whose parental rights have been terminated; the foster parent(s); the residential child agency providing care for the child; and any other person whom the court deems necessary.

The clerk does not need to issue summons to any person who has already received sufficient notice of the time, date, place, and purpose of the permanency hearing.

(2) *Form.* The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.

(3) *Manner of service.* The manner of service shall be pursuant to Rule 22(a)(3) of these rules.

(4) *Time.* Summons shall be served not less than three (3) days before the date set for the permanency hearing.

(5) *Waiver of summons by a party other than the child.* Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.

(6) *Waiver of three (3) days' time before hearing by a child served with process.* Waiver of three (3) days' time before the permanency hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.

(7) *Enforcement.* Enforcement of the summons shall be pursuant to Rule 22(a)(7) of these rules.

(c) *Conduct of hearing.* In conducting the hearing, the court shall require a written report and may require information or statements from the child's Department of Human Services, Division of Family and Children's Services worker, youth court counselor, if any, parent, guardian or custodian, which includes, but is not limited to, an evaluation of the family's progress and recommendations for modifying the permanency plan and concurrent plan in the best interest of the child. The judge or referee shall, at the permanency hearing determine the future status of the child, including, but not limited to, whether the child should be:

(i) returned to the parent(s),

(ii) placed with suitable relatives,

(iii) referred for termination of parental rights and placed for adoption,

(iv) placed for the purpose of establishing durable legal custody, or

(v) continued in foster care on a permanent or long-term basis because of the child's special needs or circumstances.

If the child is in an out-of-state placement, the hearing shall determine whether the out-of-state placement continues to be appropriate and in the best interest of the child. At the permanency hearing the judge or referee shall determine, and the court order shall recite that reasonable efforts were made by the Department of Human Services, Division of Family and Children's Services to finalize the child's permanency plan and concurrent plan that was in effect on the date of the disposition hearing. The judge or referee may find that reasonable efforts to maintain the child within the child's home shall not be required in accordance with Section 43-21-603(7)(c) of the Mississippi Code.

(d) *Findings pertaining to termination of parental rights.*

(1) The court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

(i) the child is being cared for by a relative; and/or

(ii) the Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(2) Where the court does not make a finding under Rule 29(d)(1), the Department of Human Services, Division of Family and Children's Services may forward a termination of parental rights package to the Mississippi Attorney General's Office for a termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if

(i) the child is in the legal custody of the Department of Human Services, Division of Family and Children's Services; and

(ii) the court ordered permanency plan or concurrent plan is adoption.

(e) *Permanency review hearings.* Permanency review hearings shall be conducted pursuant to Rule 31 of these rules. (Adopted effective January 8, 2009.)

COMMENT

Rule 29(a)(1). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-603(7) (2008). It also complies with the federal requirements. See 45 U.S.C. § 1355.20 (2008). The foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the disposition hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents).

Foster parents to attend permanency review hearings. — Miss. Code Ann. § 43-15-13(12) provides in part:

> The Department of Human Services shall require the following responsibilities from participating persons who provide foster care and relative care: . . .
>
> (i) Attending dispositional review hearings . . . conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

Rule 29(a)(2). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(a) (2008).

Miss. Code Ann. § 43-15-13(4) provides:

> In the case of any child who is placed in foster care on or after July 1, 1998, except in cases of aggravated circumstances prescribed in Section 43-21-603(7)(c) or (d), the child's natural parent(s) will have a reasonable time to be determined by the court, which shall not exceed a six-month period of time, in which to meet the service agreement with the department for the benefit of the child unless the department has documented extraordinary and compelling reasons for extending the time period in the best interest of the child. If this agreement has not been satisfactorily met, simultaneously the child will be referred to the appropriate court for termination of parental rights and placement in a permanent relative's home, adoptive home or a foster/adoptive home. For children under the age of three (3) years, termination of parental rights shall be initiated within six (6) months, unless the department has documented compelling and extraordinary circumstances, and placement in a permanent relative's home, adoptive home or foster/adoptive home within two (2) months. For children who have been abandoned pursuant to the provisions of Section 97-5-1, termination of parental rights shall be initiated within thirty (30) days and placement in an adoptive home shall be initiated without necessity for placement in a foster home. The department need not initiate termination of parental rights proceedings where the child has been placed in durable legal custody or long-term or formalized foster care by a court of competent jurisdiction.

Rule 29(b). — This provision comports with the statutory procedures. See Miss. Code Ann. §§ 43-21-505(5); 43-21-613(3)(a) (2008). Foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the permanency hearing. See also Miss. Code Ann. 43-15-13(11) (providing rights to be extended to foster parents)

Persons who should always be present at the permanency hearing include: "judge or judicial officer; age appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 85 (1995). Other persons whose presence may be needed at the permanency hearing include: "extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses." Id.

Rule 29(c). — This provision comports with the statutory procedures. See Miss.

Code Ann. § 43-21-613(3)(a) (2008). Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

Key decisions to be determined at review hearing. — Key decisions the court should make at the permanency review hearing include: "whether there is a need for continued placement of a child; whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

Key elements for showing reasonable efforts. — DFCS must show that reasonable efforts have been made to maintain the child within the child's own home when recommending continued foster care. Key elements to this showing include: "a description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful; [and,] an explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

Rule 29(d)(1). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(b) (2008).

Rule 29(d)(2). — The Department of Human Services, Division of Family and Children's Services is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws. See 42 U.S.C. § 675 (2008); 45 C.F.R. § 1356.21 (2008); Miss. Code Ann. §§ 43-15-13, 93-15-101 to 93-15-111 (2008).

Termination of parental rights package. — A termination of parental rights package contains forms and documentation required by the Mississippi Attorney General's Office to proceed with a termination of parental rights action.

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to permanency hearings include:

Foster care maintenance payments program implementation requirements. — 45 C.F.R. § 1356.21 (2008) provides in part:

(a) Statutory and regulatory requirements of the Federal foster care program. To implement the foster care maintenance payments program provisions of the Title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and Sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

Foster care maintenance payments cover. — 45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR

Parts 1355, 1356 and 1357 of this title are defined as follows- . . .

Foster care maintenance payments are payments made on behalf of a child eligible for Title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences.

Foster care means. — 45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows — . . .

Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Date child is considered to have entered foster care means. — 45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows — . . .

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to § 1356.21(k). A State may use a date earlier than that required in this paragraph, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in Section 475(5) of the Act and for providing time-limited reunification services described at Section 431(a)(7) of the Act. The definition has no relationship to establishing initial Title IV-E eligibility.

Permanency hearing means; time requirements. — 45 C.F.R. § 1355.20 (2008) provides in part:

(a) Unless otherwise specified, the following terms as they appear in 45 CFR Parts 1355, 1356 and 1357 of this title are defined as follows — . . .

Permanency hearing means:

(1) The hearing required by Section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

(ii) Placed for adoption, with the State filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months dur-

ing the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the State agency. Paper reviews, ex parte hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

See also 42 U.S.C. §§ 671(a)(15)(E), -675(5)(C) (2008); 45 C.F.R. § 1356.21 (2008).

Permanency hearing determinations. — 42 U.S.C. 675 (2008) provides in part:

(5) The term "case review system" means a procedure for assuring that — ...

(C) with respect to each such child, (i) procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a permanency hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 12 months after the date the child is considered to have entered foster care (as determined under subparagraph (F)) (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement, in the case of a child who will not be returned to the parent, the hearing shall consider in-State and out-of-State placement options, and, in the case of a child described in subparagraph (A)(ii), the hearing shall determine whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; (ii) procedural safeguards shall be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents; and (iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child; . . .

Judicial determination of reasonable efforts to prevent a child's removal from the home. — 45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(1) Judicial determination of reasonable efforts to prevent a child's removal from the home.

(i) When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required to prevent the removal, in accordance with paragraph (b)(3) of this section, must be made no later than 60 days from the date the child is removed from the home pursuant to paragraph (k)(1)(ii) of this section.

(ii) If the determination concerning reasonable efforts to prevent the removal is not made as specified in paragraph (b)(1)(i) of this section, the child is not eligible under the Title IV-E foster care maintenance payments program for the duration of that stay in foster care.

See also 42 U.S.C. § 671(a)(15) (2008) (setting forth reasonable efforts criteria); 45 C.F.R. § 1356.21 (2008) (circumstances not requiring reasonable efforts determination).

Judicial determination of reasonable efforts to finalize a permanency

plan. — 45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(2) Judicial determination of reasonable efforts to finalize a permanency plan.

(i) The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

(ii) If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under Title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

Contrary to the welfare determination. — 45 C.F.R. § 1356.21 (2008) provides in part:

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for Title IV-E foster care maintenance payments for the duration of that stay in foster care.

Documentation of judicial determinations. — 45 C.F.R. § 1356.21 (2008) provides in part:

(d) Documentation of judicial determinations. The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, including judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order

(1) If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations.

(3) Court orders that reference State law to substantiate judicial determinations are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

Concurrent planning — 45 C.F.R. § 1356.21 (2008) provides in part:

(b) Reasonable efforts. . . .

(4) Concurrent planning. Reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child and family

Trial home visits. — 45 C.F.R. § 1356.21 (2008) provides in part:

(e) Trial home visits. A trial home visit may not exceed six months in duration, unless a court orders a longer trial home visit. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and Title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required.

Editor's Note — (Amended effective December 1, 2016).

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 30. Foster care review hearings.

The foster care review of a child in foster care placement shall be conducted pursuant to Section 43-15-13 of the Mississippi Code and as otherwise provided by law. (Adopted January 8, 2009.)

COMMENT

Rights of foster parents. — Miss. Code Ann. § 43-15-13(11) provides:

The Department of Human Services shall extend the following rights to foster care parents:

(a) A clear understanding of their role as foster parents and the roles of the birth parent(s) and the placement agency in respect to the child in care;

(b) Respect, consideration, trust and value as a family who is making an important contribution to the agency's objectives;

(c) Involvement in all the agency's crucial decisions regarding the foster child as team members who have pertinent information based on their day-to-day knowledge of the child in care;

(d) Support from the family protection worker or the family protection specialist in efforts to do a better day-to-day job in caring for the child and in working to achieve the agency's objectives for the child and the birth family through provision of:

(i) Pertinent information about the child and the birth family.

(ii) Help in using appropriate resources to meet the child's needs.

(iii) Direct interviews between the family protection worker or specialist and the child, previously discussed and understood by the foster parents;

(e) The opportunity to develop confidence in making day-to-day decisions in regard to the child;

(f) The opportunity to learn and grow in their vocation through planned foster parent education;

(g) The opportunity to be heard regarding agency practices that they may question; and

(h) Reimbursement for costs of the foster child's care in the form of a board payment based on the age of the foster child as prescribed in Section 43-15-17.

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to foster care review hearings include:

Reviews no less frequently than once every six months. — 42 U.S.C. § 675 (2008) provides in part:

(5) The term "case review system" means a procedure for assuring that — …

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the safety of the child the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship, . . .

Rule 31. Permanency review hearings.

(a) *Time.* The court shall conduct permanency review hearings for a child who has been adjudicated abused or neglected, at least annually after each permanency hearing, for as long as the child remains in the custody of the Mississippi Department of Human Services. Such shall include each case where there has been a termination of parental rights and the child is in the custody of the Department of Human Services, Division of Family and Children's Services, until such time as either:

(i) the child is adopted; or

(ii) an appropriate permanency plan is achieved.

(b) *Summons.*

(1) *Persons summoned.* When the date of the permanency review hearing has been set by the youth court, and if necessary to fulfill the notice requirements, the judge or the judge's designee shall order the clerk of the youth court to issue a summons to the following to appear personally at such hearing: the child named in the petition; the person or persons who have custody or control of the child; the parent or guardian of the child if such parent or guardian does not have custody of the child, except in no event shall summons issue to the parent(s) whose parental rights have been terminated; the foster parent(s); the residential child agency providing care for the child; and any other person whom the court deems necessary. The clerk does not need to issue summons to:

(i) any person who has already been served with process or who has already appeared in court proceedings in the cause; and

(ii) who has received sufficient notice of the time, date, place and purpose of the permanency review hearing.

(2) *Form.* The form of the summons shall be pursuant to Rule 22(a)(2) of these rules.

(3) *Manner of service.* The manner of service shall be pursuant to Rule 22(a)(3) of these rules, except in no event shall summons issue to the parent(s) whose parental rights have been terminated.

(4) *Time.* Summons shall be served not less than three (3) days before the date set for the permanency review hearing.

(5) *Waiver of summons by a party other than the child.* Waiver of summons by a party other than the child shall be pursuant to Rule 22(a)(5) of these rules.

(6) *Waiver of three (3) days' time before hearing by a child served with process.* Waiver of three (3) days' time before the permanency review hearing by a child served with process shall be pursuant to Rule 22(a)(6) of these rules.

(7) *Enforcement.* Enforcement of the summons shall be pursuant to Rule 22(a)(7) of these rules.

(c) *Conduct of hearing.* The court shall conduct the permanency review hearing in like manner as required for permanency hearings under Rule 29(c) of these rules. At each such hearing, the court shall determine the adequacy of the child's permanency plan and, as deemed in the best interest of the child, make appropriate modifications thereto.

(d) *Findings pertaining to termination of parental rights.*

(1) If the permanency plan is termination of parental rights, the court may find that the filing of a termination of parental rights petition is not in the child's best interest if:

(i) the child is being cared for by a relative; and/or

(ii) the Department of Human Services has documented compelling and extraordinary reasons why termination of parental rights would not be in the best interests of the child.

(2) Where the court does not make a finding under Rule 31(d)(1), the Department of Human Services, Division of Family and Children's Services may forward a termination of parental rights package to the Mississippi Attorney General's Office for a termination of parental rights petition to be filed pursuant to the "Termination of Rights of Unfit Parents Law" if:

(i) the child is in the legal custody of the Department of Human Services, Division of Family and Children's Services; and

(ii) the court ordered permanency plan or concurrent plan is adoption. (Adopted effective January 8, 2009.)

COMMENT

Rule 31(a). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(a) (2008).

Rule 31(b)(1). — Foster parent(s) and the residential child caring agency providing care for the child are entitled to appear at the permanency hearing. See also Miss. Code Ann. § 43-15-13(11) (providing rights to be extended to foster parents).

Foster parents responsibility to attend certain hearings. — Miss. Code Ann. § 43-15-13(12) provides in part:

The Department of Human Services shall require the following responsibilities from participating foster parents: . . .

(i) Attending dispositional review hearings and termination of parental rights hearings conducted by a court of competent jurisdiction, or providing their recommendations to the court in writing.

Persons who should always be present at the permanency hearing include: "judge or judicial officer; age appropriate children; parents whose rights have not been terminated, including putative fathers; relatives with legal standing or other custodial adults; assigned caseworker; agency attorney; attorney for parents (separate attorney if conflict warrants); legal advocate for the child and/or GAL/CASA; court reporter or suitable technology; and security personnel." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 85 (1995). Other persons whose presence may be needed at the permanency hearing include: "extended family members; . . . prospective adoptive parents; judicial case management staff; service providers; adult or juvenile probation or parole officers; other witnesses." Id. These listings should likewise pertain to a permanency review hearing.

Rule 31(c). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(a) (2008). Reasonable efforts findings are required until the permanency plan or concurrent plan is achieved.

Key decisions to be determined at review hearing. — Key decisions the court should make at the permanency review hearing include: "whether there is a need for continued placement of a child;

whether the court-approved, long-term permanent plan for the child remains the best plan for the child; whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child; whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances; whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs; whether the terms of visitation need to be modified; whether terms of child support need to be set aside or adjusted; whether any additional court orders need to be made to move the case toward successful completion; [and] what time frame should be followed to achieve reunification or other permanent plan for each child." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

Key elements for showing reasonable efforts. — DFCS must show that reasonable efforts have been made to maintain the child within the child's own home when recommending continued foster care. Key elements to this showing include: "a description of the efforts made by the agency to reunify the family since the last disposition or review hearing and an explanation why those efforts were not successful; [and,] an explanation why the child cannot presently be protected from the identified problems in the home even if services are provided to the child and family." NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING PRACTICE IN CHILD ABUSE AND NEGLECT CASES 75 (1995).

Rule 31(d)(1). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-613(3)(b) (2008).

Rule 32(d)(2). — The Department of Human Services, Division of Family and Children's Services is required to make reasonable efforts to finalize the adopted permanency plan and concurrent plan for the child. This provision is consistent with federal and state laws. See 42 U.S.C. § 675 (2008); 45 C.F.R. § 1356.21 (2008); Miss. Code Ann. §§ 43-15-13, 93-15-101 to -111 (2008).

Termination of parental rights package. — A termination of parental rights package contains forms and documentation required by the Mississippi Attorney General's Office to proceed with a termination of parental rights action.

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to permanency review hearings include:

Many federal laws and regulations applicable to permanency hearings are also applicable to permanency review hearings. See 42 U.S.C. §§ 671(a)(15), -675 (2008); 45 C.F.R. §§ 1355.20, -1356.21 (2008).

(Amended effective December 1, 2016)

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 32. Civil commitments within the jurisdiction of the youth court.

(a) *Children who may need mental health services and commitment.*

(1) *Pre-evaluation screening and treatment.* The youth court shall order a pre-evaluation screening and treatment, and a mental examination and a physical evaluation, pursuant to Section 41-21-67 of the Mississippi Code, for a child in its custody if:

(i) the Department of Human Services, or other interested person or agency, files with the clerk of the court an affidavit alleging the child to be in need of mental health services; and

(ii) the youth court finds, based upon the affidavit and any other relevant evidence, that there is probable cause to believe the child is in need of mental health services.

(2) *Affidavit alleging child in need of mental health services.* The affidavit alleging the child to be in need of mental health services shall be filed in duplicate and include:

(i) the name and address of the child's nearest relatives, if known;

(ii) the reason for the affidavit;

(iii) a factual description of the child's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred.

Each factual allegation shall be stated in behavioral terms, and not contain judgmental or conclusory statements, and be supported by observations of witnesses named in the affidavit.

(3) *Dismissal of affidavit.* If the physicians, or the physician and psychologist, appointed to conduct the mental examination and physical evaluation certify that the child is not in need of treatment, the youth court shall dismiss the affidavit.

(4) *Ordering a commitment hearing.* The youth court shall order a commitment hearing if it finds probable cause, based upon the physicians' and any psychologist's certificate and any other relevant evidence, that the child is in need of inpatient treatment. Such hearing shall be set within seven (7) days of the filing of the certificate unless an extension is requested by the child's attorney. In no event shall the hearing be more than (10) days after the filing of the certificate.

(5) *Summons.* Within a reasonable period of time before the hearing, the child and the child's attorney shall be provided with notice, which shall include:

(i) notice of the date, time and place of the hearing;

(ii) a clear statement of the purpose of the hearing;

(iii) the possible consequences or outcome of the hearing;

(iv) the facts which have been alleged in support of the need for commitment;

(v) the names, addresses and telephone numbers of the examiner(s); and

(vi) other witnesses expected to testify.

(6) *Conduct of the commitment hearing.* At the beginning of the commitment hearing, the court shall explain to the child and parties: the right to counsel; the right to remain silent; the right to subpoena witnesses; the right to confront and cross-examine witnesses; and the right to appeal, including the right to a transcript of the proceedings. The hearing shall be conducted:

(i) without a jury and may be recessed from time to time;

(ii) under the rules of evidence and rules of court as may comply with applicable constitutional standards;

(iii) by excluding the general public and admitting only those persons found by the court to have a direct interest in the cause or work of the court;

(iv) with a complete record of all the evidence taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

The child shall be present at the hearing, unless the judge determines that the child is unable to attend and the reasons for such determination are made a part of the record, and shall not be so under the influence or suffering from the effects of drugs, medication or other treatment so as to be hampered in participating in the proceedings. The court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the child has received pending the hearing, unless the court determines that such a record would be impractical and documents the reasons for that determination.

(7) *Commitment order.* The youth court shall order the child committed in the least restrictive treatment facility necessary to meet the child's treatment needs if it finds:

(i) by clear and convincing evidence the child to be in need of mental health services; and,

(ii) after careful consideration, that there are no suitable alternatives to judicial commitment.

The court shall state the findings of fact and conclusions of law which constitute the basis for the order of commitment. The findings shall include a listing of less restrictive alternatives considered by the court and the reasons that each was found not suitable. Any initial commitment shall not exceed three (3) months.

(b) *A child in need of special care who is in need of mental treatment.* If the youth court finds at the disposition hearing that a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child is also a child in need of special care, the youth court may, in its discretion, make any appropriate additional disposition designed for the treatment of the disability or infirmity, which may include civil commitment to a state institution providing care for that disability or infirmity. Any commitment, including one to a Department of Mental Health facility, ordered pursuant to this rule shall be in compliance with the requirements for civil commitment as set forth in Section 41-21-61 et seq. of the Mississippi Code.

(c) *Permanency hearings and permanency review hearings not suspended.* The court shall conduct permanency hearings and permanency review hearings as required under these rules without regard to whether a child has been referred for mental health services or committed for inpatient treatment. (Adopted effective January 8, 2009.)

COMMENT

Rule 32(a). — This provision comports to the statutory procedures. See Miss. Code Ann. § 41-21-61 to 41-21-109 (2008). It is also congruent with Mississippi's constitutional mandates. See Miss. Const. Art. IV, § 86 ("It shall be the duty of the legislature to provide by law for the treatment and care of the insane; and the legislature may provide for the care of the indigent sick in the hospitals in the state."); In re B.C.M., 744 So. 2d 299, 303 (Miss. 1999) ("The Constitution requires that the State assume responsibility for [the child], and reasonable statutory interpretation requires the director to provide temporary housing, treatment and care, which should become permanent when adequate "services and facilities are available" in the facility. The only role of the trial judge regarding this minor was to determine whether the minor needed the treatment and care provided by the state facility, and if so, to order [the child's] commitment."); see also Miss. Code Ann. §§ 43-21-315(4), 43-21-603(9) (2008).

Rule 32(a)(7). — The standard of proof for civil commitments is by clear and convincing evidence. See Addington v. Texas, 441 U.S. 418, 432-33 (1979) ("To meet due process demands [required in civil commitment proceedings], the standard . . . must be greater than the preponderance-of-the-evidence standard applicable to other categories of civil cases.").

Alternatives to commitment to inpatient care may include, but shall not be limited to: voluntary or court-ordered outpatient commitment for treatment with specific reference to a treatment regimen; day treatment in a hospital; night treatment in a hospital; or placement in the custody of a friend or relative or the provision of home health services. See Miss. Code Ann. § 41-21-73(4) (2008).

Rule 32(b). — This provision comports with the statutory procedures. See Miss. Code Ann. § 43-21-611 (2008).

(Amended effective December 1, 2016).

FORMS

Editor's Note — Deleted effective December 1, 2016.

Rule 33. Truancy.

(a) *Truant child alleged as child in need of supervision.*

(1) *Filing a report of a truant child alleged as a child in need of supervision.* When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a report with the youth court intake unit. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children and to file a report with the youth court intake unit.

(2) *Intake.* Intake procedures shall [be] conducted pursuant [to] Rule 8(a) of these rules.

(3) *Court orders upon intake recommendations.* Court orders upon intake recommendations shall be conducted pursuant to Rule 9(a) of these rules, except that if the court orders that an informal adjustment process be made it shall be initiated as expeditiously as possible.

(4) *Petition.* Procedures for filing a petition shall be conducted pursuant to Rule 20(b) of these rules.

(5) *Proper venue.* Proper venue shall be pursuant to Rule 21(a) of these rules.

(6) *Summons for adjudicatory hearings.* Service of summons shall be made pursuant to Rule 22(a) of these rules.

(7) *Summons for disposition hearings.* Service of summons shall be made pursuant to Rule 22(b) of these rules.

(8) *Adjudication hearings.* Adjudication hearings alleging a truant child as a child in need of supervision shall be conducted pursuant to Rule 24(a) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

(9) *Adjudication orders.* Adjudication orders shall comply with Rule 25(a) of these rules.

(10) *Disposition hearings.* Disposition hearings for a truant child adjudicated as a child in need of supervision shall be conducted pursuant to Rule 26(b) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

(11) *Disposition orders.* The disposition order may include any disposition allowed under Rule 27(b) of these rules. The court shall make an appropriate disposition to ensure compliance with Mississippi's Compulsory School Attendance Law, including enrollment or re-enrollment in school pursuant to Sections 37-13-91 and 43-21-621 of the Mississippi Code.

(12) *Modification of disposition orders and annual reviews.* Modification of disposition orders and annual reviews shall be conducted pursuant to Rule 28(a) of these rules.

(b) *Truant child alleged as a neglected child.*

(1) *Filing a report of a truant child alleged as a child in need of supervision.* When a school attendance officer has made all attempts to secure enrollment and/or attendance of a compulsory-school-age child and is unable to effect the enrollment and/or attendance, the attendance officer shall file a report with the youth court intake unit. Sheriffs, deputy sheriffs and municipal law enforcement officers shall be fully authorized to investigate all cases of nonattendance and unlawful absences by compulsory-school-age children and to file a report with the youth court intake unit.

(2) *Intake.* Intake procedures shall [be] conducted pursuant [to] Rule 8(b) of these rules.

(3) *Court orders upon intake recommendations.* Court orders upon intake recommendations shall be conducted pursuant to Rule 9(b) of these rules, except that if the court orders that an informal adjustment process be made it shall be initiated as expeditiously as possible.

(4). *Petition.* Procedures for filing a petition shall be conducted pursuant to Rule 20(c) of these rules.

(5) *Proper venue.* Proper venue shall be pursuant to Rule 21(b) of these rules.

(6) *Summons for adjudicatory hearings.* Service of summons shall be made pursuant to Rule 22(a) of these rules.

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(7) *Summons for disposition hearings.* Service of summons shall be made pursuant to Rule 22(b) of these rules.

(8) *Adjudication hearings.* Adjudication hearings alleging a truant child as a neglected child shall be conducted pursuant to Rule 24(a) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

(9) *Adjudication orders.* Adjudication orders shall comply with Rule 25(b) of these rules.

(10) *Disposition hearings.* Disposition hearings for a truant child adjudicated as a neglected child shall be conducted pursuant to Rule 26(b) of these rules, except that such hearings shall be conducted as expeditiously as possible and no later than twenty-one (21) days of the petition being filed.

(11) *Disposition orders.* The disposition order may include any disposition allowed under Rule 27(c) of these rules. The court shall make an appropriate disposition to ensure compliance with Mississippi's Compulsory School Attendance Law, including enrollment or re-enrollment in school pursuant to Sections 37-13-91 and 43-21-621 of the Mississippi Code.

(12) *Modification of disposition orders and annual reviews.* Modification of disposition orders and annual reviews shall be conducted pursuant to Rule 28(b) of these rules.

(13) *Permanency hearings.* Permanency hearings shall be conducted pursuant to Rule 29 of these rules.

(14) *Foster care review hearings.* Foster care review hearings shall be conducted pursuant to Rule 30 of these rules.

(15) *Permanency review hearings.* Permanency review hearings shall be conducted pursuant to Rule 31 of these rules. (Adopted effective January 8, 2009.)

COMMENT

Rule 33(a)(1), -(b)(1). — A school attendance officer should not file a report until all attempts have been made to secure enrollment and/or attendance of the truant child. See Miss. Code Ann. §§ 37-13-89(4), -91(7).

Duties of school attendance officers. — Miss. Code Ann. § 37-13-89(4) provides:

It shall be the duty of each school attendance officer to:

(a) Cooperate with any public agency to locate and identify all compulsory-school-age children who are not attending school;

(b) Cooperate with all courts of competent jurisdiction;

(c) Investigate all cases of nonattendance and unlawful absences by compulsory-school-age children not enrolled in a nonpublic school;

(d) Provide appropriate counseling to encourage all school-age children to attend school until they have completed high school;

(e) Attempt to secure the provision of social or welfare services that may be required to enable any child to attend school;

(f) Contact the home or place of residence of a compulsory-school-age child and any other place in which the officer is likely to find any compulsory-school-age child when the child is absent from school during school hours without a valid written excuse from school officials, and when the child is found, the officer shall notify the parents and school officials as to where the child was physically located;

(g) Contact promptly the home of each compulsory-school-age child in the school district within the officer's jurisdiction who is not enrolled in school or is not in attendance at public school and is without a valid written excuse from school officials; if no valid reason is found for the nonenrollment or absence from the school, the school attendance officer shall give written notice to the parent, guardian or custodian of the requirement for the child's enrollment or attendance;

(h) Collect and maintain information concerning absenteeism, dropouts and other attendance-related problems, as may be required by law or the Office of Compulsory School Attendance Enforcement; and

(i) Perform all other duties relating to compulsory school attendance established by the State Department of Education or district school attendance supervisor, or both.

Rule 33(a)(6), -(a)(7), -(b)(6), -(b)(7). — Persons who may be appointed by the court to serve summons under these provisions include: a sheriff, deputy sheriff, a municipal law enforcement officer, a constable, a school attendance officer, a school official, a youth court counselor, or any other person deemed appropriate.

Rule 33(a)(8), -(b)(8). — This provision departs from the usual time requirements for conducting an adjudication hearing, but is consistent with the statutory directive requiring that "[t]he youth court shall expedite a hearing to make an appropriate adjudication and a disposition to ensure compliance with the Compulsory School Attendance Law." See Miss. Code Ann. § 37-13-91(7) (2008).

Rule 34. Interstate compact for placement of children.

Procedures for the orderly and timely interstate placement of children shall be pursuant to Sections 43-18-1 through 43-18-17 of the Mississippi Code. (Adopted effective January 8, 2009.)

COMMENT

Rule 34. — In accordance with Mississippi Department of Human Services policies, DFCS workers must complete the incoming ICPC home study within forty-five (45) days and directly send it to the ICPC unit at the State Office. The ICPC unit will then review the home study and, if needed, request additional information from the county staff, prior to sending it to the requesting state on or before the sixty (60) day deadline.

FEDERAL REQUIREMENTS

These rules require compliance with federal laws and regulations which impact funding for cases within the jurisdiction of the youth court. See U.R.Y.C.P. 7. Failure to comply results in the loss of federal monies crucial in achieving the best interests of the child and the interest of justice. Federal laws and regulations applicable to the interstate compact for placement of children include:

Procedures for the orderly and timely interstate placement of children — 42 U.S.C. § 671 (2008) provides in part:

[A State plan to receive formula grants shall] . . .

(25) provide that the State shall have in effect procedures for the orderly and timely interstate placement of children; and procedures implemented in accordance with an interstate compact, if incorporating with the procedures prescribed by paragraph (26), shall be considered to satisfy the requirement of this paragraph;

(26) provides that —

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract —

(I) conduct and complete the study; and

(II) return to the other State a report on the results of the study, which shall address the extent to which placement in the home would meet the needs of the child; and

(ii) in the case of a home study begun on or before September 30, 2008, if the State fails to comply with clause (i) within the 60-day period as a result of circumstances beyond the control of the State (such as a failure by a Federal agency to provide the results of a background check, or the failure by any entity to provide completed medical forms, requested by the State at least 45 days before the end of the 60-day period), the State shall have 75 days to comply with clause (i) if the State documents the circumstances involved and certifies that completing the home study is in the best interests of the child; except that

(iii) this subparagraph shall not be construed to require the State to have completed, within the applicable period, the parts of the home study involving the education and training of the prospective foster or adoptive parents;

(B) the State shall treat any report described in subparagraph (A) that is received from another State or an Indian tribe (or from a private agency under contract with another State) as meeting any requirements imposed by the State for the completion of a home study before placing a child in the home, unless, within 14 days after receipt of the report, the State determines, based on grounds that are specific to the content of the report, that making a decision in reliance on the report would be contrary to the welfare of the child; and

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A); . . .

Rule 35. Drug courts.

Drug courts procedures shall be pursuant to the guidelines developed by the State Drug Court Advisory Committee. (Adopted effective January 8, 2009.)

COMMENT

Rule 35. — Section 9-23-7 of the Mississippi Code provides:

The Administrative Office of Courts shall be responsible for certification and monitoring of local drug courts according to standards promulgated by the State Drug Courts Advisory Committee.

Rule 36. Rehearing of referee's order.

Procedures for a rehearing of a referee's order shall be pursuant to Section 43-21-111(5) of the Mississippi Code. (Adopted effective January 8, 2009.)

Rule 37. Appeals from final orders or decrees.

Appeals from final orders or decrees of the court shall be pursuant to the Mississippi Rules of Appellate Procedures. (Adopted effective January 8, 2009.)

COMMENT

Rule 37. — Only the initials of the child shall appear on the record on appeal. See In re R.R.B., 394 So. 2d 907, 908 (Miss. 1981) ("[Section 43-21-651] is mandatory that nowhere on the records of this Court or the appellate records or briefs or other proceedings should the minor's name appear, only his or her initials."). In reviewing an adjudication of delinquency, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found beyond a reasonable doubt that the child committed the delinquent act. See In re L.M., 600 So. 2d 967, 969 (Miss. 1992); In re S.B., 566 So. 2d 1276, 1278 (Miss. 1990). In reviewing an adjudication of abuse or neglect, the appellate court will not reverse unless, considering all of the evidence before the youth court in the light most favorable to the State, reasonable persons could not have found by a preponderance of the evidence that the child was abused or neglected. See In re M.R.L., 488 So. 2d 788, 791 (Miss. 1986). The right to appeal in forma pauperis attaches if a fundamental right is at issue. See M.L.B. v. S.L.J., 519 U.S. 102, 107 (1996) ("[J]ust as a State may not block an indigent petty offender's access to an appeal afforded others, [a State] may not deny [a parent], because of her poverty, appellate review of the sufficiency of the evidence on which the trial court found her unfit to remain a parent."); cf. In re J.R.T., 749 So. 2d 105, 110 (Miss. 1999) ("The state's judicial process had not been invoked to sever or alter the parents' fundamental rights. If there had been a termination of the parental relationship, then substantive and procedural due process would have required that the parents be afforded the right of appellate review.").

Rule 38. Sanctions.

The court may enforce compliance with these rules, whenever reasonably necessary in carrying out the purpose of the Mississippi Youth Court Law and these rules, by contempt of court, sanctions, or other appropriate disciplinary actions. (Adopted effective December 1, 2016.)

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APPELLATE E-FILING ADMINISTRATIVE PROCEDURES

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APPENDIX I. FORMS

Rule 1. Introduction and Scope of Electronic Filing.

The following procedures govern the utilization of the appellate e-filing system with the Clerk of the Supreme Court. These procedures may be amended from time to time. **Persons using the appellate e-filing system should consult the Mississippi Supreme Court's website [www.courts.ms.gov] for the most current procedures.**

A. *Participants in Electronic Filing.* The system permits attorneys to file documents with the Court from any location over the Internet. While all parties, including those proceeding pro se, have "read only" public access to documents filed, only registered attorneys, as officers of the Court, are permitted to file electronically. Parties proceeding pro se shall not file electronically unless said pro se party is a registered attorney in good standing and admitted to practice in the Court.

B. *Training and Technical Assistance.* These procedures govern use of the appellate e-filing system and are not intended as a technical guide for the use of the system. Information regarding the equipment needed to participate, as well as information on training and access to computer-based tutorials, can be obtained from courts.ms.gov.

C. *Definitions and Instructions.* The term "conventional filing" means presentation to the Clerk's Office of a hard copy of a document which cannot or should not be filed electronically. The hard or paper copy should be accompanied by an electronic storage device with the document in a text PDF file(s), if possible. If not, the document will be scanned for inclusion as an image PDF unless otherwise provided in these procedures. The "image" is not a searchable document; a text PDF is a searchable document.

The term "document" shall include pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filing by or to the Court, whether or not the document is electronic or a hard or paper copy. "Hard copy" and "paper copy" are used interchangeably in these procedures.

"Electronic filing" means uploading a document in PDF format directly from the registered user's computer, to file that document in the Court's case file using the Court's Internet-based system. **Sending a document or pleading**

to the Court via e-mail or facsimile does not constitute "electronic filing.

The "E-Mail Address of Record" is the Internet e-mail address of each attorney in the case as maintained by the system.

A "Filing User" is an attorney who is registered to use the system.

A "Notice of Electronic Filing" (NEF) is generated automatically by the system upon completion of an electronic filing. The Notice of Electronic Filing, when e-mailed to the e-mail addresses of record in the case, acts as the proof of service.

The term "PDF" refers to Portable Document Format. A PDF document allows anyone to open the converted document across a broad range of hardware and software, with layout, format, links, and images intact.

D. *Selection and Designation of Cases for Electronic Filing.* Unless otherwise permitted by these administrative procedures or unless otherwise authorized by the Court, all briefs, motions, responses, and compliance documents submitted for filing with the Clerk of the Supreme Court may be filed electronically by a registered attorney beginning July 1, 2013. Beginning January 1, 2014, all briefs, motions, responses, and compliance documents submitted for filing with the Clerk of the Supreme Court shall be filed electronically by a registered attorney or shall be scanned and uploaded to the system by the Clerk's Office.

Rule 2. Registration.

A. *Eligibility.* Attorneys admitted to practice in the Supreme Court and Court of Appeals, including attorneys admitted to practice in those courts under the *pro hac vice* or *pro bono publicus* provisions of the Mississippi Rules of Appellate Procedure, may register as Filing Users. No other person may register as a Filing User, even if he or she is a party proceeding pro se.

B. *Registration.*

1. Attorneys should register with the system electronically by accessing the Attorney Registration site at *courts.ms.gov/mec/mec.html.* Each attorney in a law firm must register individually. Registration for the appellate e-filing system shall be the same as for the Mississippi Electronic Courts (MEC) system.

2. Each attorney registering in the system will receive an Internet e-mail message after his or her password has been assigned. This is to ensure that the attorney's Internet e-mail address has been entered correctly in the system and to convey the login and password information to the attorney.

3. An attorney's registration will constitute a waiver of conventional service of documents. The attorney agrees to accept service of notice of the electronic filing by authorized e-mail.

4. Attorneys are responsible for updating their mailing address or e-mail address online through the e-filing system.

C. *Passwords.* Each attorney registered to participate in MEC is entitled to one system password. An attorney's MEC login and password will be utilized in both the appellate e-filing system and MEC. Attorneys may change their own passwords.

Pursuant to M.R.A.P. 46(d), every petition, motion, brief, and other paper shall be signed by at least one attorney of record. An attorney's password issued by MEC combined with the user's login identification serves as the attorney's signature for Rule 46 and other purposes. Therefore, it is imperative that an attorney protect and secure the password issued by MEC. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney immediately to notify the MEC helpdesk. In the event of the resignation or reassignment of the person with authority to use a password, the attorney should change the password immediately.

No attorney shall knowingly permit his or her password to be utilized by anyone other than an authorized employee of his or her office. Because the login and password together constitute an attorney's signature regardless of whether the attorney personally uses the login and password or delegates that authority to someone else, the attorney is responsible for safeguarding and protecting his or her login and password at all times. Once registered, the attorney shall be responsible for all documents filed with his or her password.

Rule 3. Electronic Filing and Service of Documents.

A. *Electronic Filing.*

1. Electronically filed documents must meet the same requirements of format and page limits as documents "conventionally filed" (as defined in Definitions and Instructions) pursuant to the Mississippi Rules of Appellate Procedure, except that the title of any brief submitted electronically should be in Times New Roman font with a 30 point font size, and the color requirements for brief covers shall not apply to electronically filed documents.

2. Any requirement in the Mississippi Rules of Appellate Procedure for multiple copies of a document to be submitted with the original filing shall not apply to a document filed electronically in the system.

3. In order to file a document which requires leave of the Court, such as an amicus or supplemental brief, the proposed document shall be attached as an exhibit to a motion. If the motion is granted, **the attorney must electronically re-file the proposed document as an independent document after entry of the Court's order.**

4. Electronic transmission of a document consistent with these procedures will, upon the complete transmission of the same to the Clerk's Office, constitute filing of the document for all purposes of the Mississippi Rules of Appellate Procedure and will constitute entry of that document onto the docket maintained by the Clerk pursuant to M.R.A.P. 45.

5. The attorney filing a document is responsible for ensuring the complete transmission of the document being electronically filed. A receipt acknowledging the complete transmission of the document which has been filed will appear immediately on the filer's screen. Parties also can verify the filing of documents by inspecting the Court's electronic docket sheet.

6. When a Filing User's document has been filed electronically, the official record is the electronic document stored by the Court, and the filing party is bound by the document as filed.

7. All documents which form part of a single pleading and which are being filed at the same time may be filed electronically together under one document number, e.g., the motion and a supporting affidavit, with the exception of memoranda in support.

8. In filing documents and attachments to documents, a filing party should electronically image, i.e., "scan," a paper exhibit that is less than ten megabytes (10 MB) and submit the exhibit as an attachment in PDF format. Some attached documents, whether a scanned exhibit or other evidence, may exceed the 10 MB size requirement on the system. When this occurs, the document shall be reduced to as many 10 MB "bundles" as required to file the entire document. Each bundle is filed as a separate attachment; the description of each attachment should identify the document type and page numbers, i.e., "Exhibit 1 - Pages 1-43" or "Exhibit 2 - Pages 44-83." Attorneys are encouraged to file an Exhibit List as the first attachment.

B. *Signatures.* A pleading or other document requiring an attorney's signature shall identify the attorney in the following manner, whether filed electronically or submitted on disk or CD to the Clerk's Office:

"s/(attorney name)" (e.g., s/Jane Doe)
Jane Doe
Mississippi Bar Number
Firm Name
Firm Address
Telephone Number
Fax Number
E-Mail Address

Electronically represented signatures of all parties and Filing Users described above are presumed valid. An attorney challenging the authenticity of an electronically filed document must file a timely objection to the document. Documents which require more than one party's signature must be filed electronically by submitting a scanned document containing all necessary signatures or by showing the consent of the other parties on the document.

C. *Title of Documents.* The person electronically filing a pleading or other document will be responsible for designating a filing event for the pleading or other document by using one of the categories contained in the system. The filing event selected serves only as a descriptive reference and does not alter the title which appears on the pleading or document being filed.

D. *Filing Deadlines.* Filing documents electronically does not alter any filing deadlines or any time computation pursuant to M.R.A.P. 26. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to **midnight Central Standard (or Daylight Savings) Time.** For the filing to be **completed,** the filer must have received the Notice of Electronic Filing from the Court. The Notice of Electronic Filing reflects the time the electronic transmission of a document is completed.

Accordingly, a document will be deemed timely filed if the Notice of Electronic Filing reflects time prior to midnight. However, a judge may order that a document be filed by a time certain, which then becomes the filing deadline. Although documents can be filed electronically 24 hours a day, filers are strongly encouraged to file all documents during office hours.

E. *Errors in Filing.* Once a document is submitted electronically, it becomes part of the court file, and corrections may be made only by the Court and/or the Clerk's Office. The system **will not permit** the filing party to make changes to the document(s) or docket entry once the transaction has been accepted, and the filer should not attempt to refile the documents(s).

As soon as possible after an error is discovered, the party seeking correction should follow the procedure set forth in M.R.A.P. 10(e).

F. *Service of Filed Documents on Parties.*

1. The system will generate a "Notice of Electronic Filing" when any document is filed. This notice represents service of the document on attorneys who are registered participants with the system. Except as provided in Section 4, regarding conventional filing, the filing party shall not be required to serve any pleading or other documents on any party receiving electronic notice.

2. The filing party shall also serve those parties not designated or able to receive electronic notice but who nevertheless are entitled to notice of said pleading or other document in accordance with the Mississippi Rules of Appellate Procedure, except as otherwise provided by order of the Court. If such service of a paper copy is to be made, it shall be done in the manner provided in the Mississippi Rules of Appellate Procedure.

3. Service pursuant to Section 3(F)(1) will constitute service pursuant to M.R.A.P. 25 and will entitle the party being served, as in conventional service by U.S. mail, to the additional three days provided by M.R.A.P. 26.

G. *Certificate of Service.* A Certificate of Service is still a requirement when filing documents electronically. A sample Certificate of Service is attached as Form 2.

H. *Acknowledgment of Service.* An acknowledgment of service is still a requirement when filing documents electronically. (Amended effective January 1, 2017.)

Rule 4. Conventional Filing and Service of Documents.

A. *Conventional Filings.* As used in these procedures, a "conventionally" filed or submitted document or pleading is one presented to the Clerk or a party on paper or other non-electronic, tangible format.

1. **Sealed Cases and Confidential Cases** shall be not be included as part of the appellate e-filing system. All documents in sealed and confidential cases shall be submitted conventionally to the Clerk's Office for filing. Only authorized Court personnel will be able to view docket entries and documents in these cases. Parties must not use the Court's electronic notice facilities to serve documents in sealed or confidential cases. An NEF will not be sent on documents filed in sealed and confidential cases. Service should be made in

accordance with the Mississippi Rules of Appellate Procedure, and an acknowledgment of service must be attached to the filed document.

2. **All documents,** except for briefs, motions, responses, and compliance documents, shall be filed conventionally and not electronically.

3. **Other documents** which also shall be filed conventionally and not electronically unless specifically authorized by the Court:

a. **Exhibits and other documents** which cannot or should not be filed electronically by conversion to a legible electronic form shall be filed conventionally. Whenever possible, counsel is responsible for converting filings to an electronic form. However, if that is not possible, counsel shall electronically file a PDF document titled **Notice of Conventional Filing** as a notation on the docket sheet that filings are being held in the Clerk's Office in paper form. A sample **Notice of Conventional Filing** is attached as **Form 1**. If documents are filed in paper format, counsel must provide an original for the Clerk's Office. A paper copy must be served on all parties in the case.

b. **Documents filed by pro se litigants** shall be filed conventionally unless said pro se party is a registered attorney. The Clerk's Office will upload these conventionally filed documents into the system.

c. **Attorneys may apply to the Court for permission to file documents conventionally.** Even if the Court initially grants an attorney permission to file documents conventionally, the Court may withdraw that permission at any time during the pendency of a case and require the attorney to file documents electronically using the system.

B. *Service of Conventional Filings.* Pleadings or other documents which are filed conventionally rather than electronically shall be served in the manner provided for in the Mississippi Rules of Appellate Procedure, except as otherwise provided by order of the Court.

Rule 5. Technical Failures.

A. *The Court's System.* The Clerk's Office shall deem the public website for the appellate e-filing system to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day which were not filed due solely to such technical failures shall become due the next business day.

When unable to file a document in a timely manner due to a failure of the appellate e-filing system, a document may be filed conventionally, and the filer shall explain the conventional filing by attaching a Declaration of Technical Difficulties.

B. *The Attorney's System.* If the attorney is unable to file a document in a timely manner due to technical difficulties in the user's system (e.g., phone line problems, problems with the filer's Internet Service Provider (ISP), or hardware or software problems), the attorney should file the document conventionally and notify the Court of the inability to electronically file. Such notification may be made by attaching a Declaration of Technical Difficulties, wherein he or she explains the inability to file electronically.

Rule 6. Privacy.

A. *Obligation to Protect Sensitive and Private Information.* To achieve the goal of promoting electronic access to case files while still protecting personal privacy and addressing concerns created by Internet access to court documents, counsel shall refrain from including, or shall partially redact where inclusion is necessary and relevant to the case, the following personal data identifiers from all pleadings and other papers filed with the Court, including exhibits thereto, whether filed electronically or on paper, unless otherwise ordered by the Court or except where otherwise specifically required by rule or statute:

1. **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.

2. **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.

3. **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.

4. **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review pleadings for compliance with this procedure. Attorneys also are advised to exercise caution when filing documents that contain the following:

1) personal identifying number, such as driver's license number;
2) medical records, treatment, and diagnosis;
3) employment history;
4) individual financial information; and,
5) proprietary or trade-secret information.

Attorneys are strongly urged to share this notice with all clients so that an informed decision may be made about the inclusion of certain materials in court documents.

Users are cautioned that failure to redact personal identifiers and/or the inclusion of irrelevant personal information in a pleading or exhibit filed electronically with the Court may subject counsel to the disciplinary and remedial powers of the Court, including sanctions pursuant to M.R.A.P. 46.

B. *Exemptions From the Redaction Requirement.* The redaction requirement shall not apply to the following:

1. The record of a court, tribunal, or administrative proceeding, if that record was not subject to the redaction requirement when originally filed.

2. Documents filed under seal.

C. *Filing Documents With Sensitive and Private Information.* A party wishing to file a document containing the personal data identifiers listed above may do so in the following manner:

1. **File an unredacted version** of the document under seal, or

2. **File a reference list under seal** The reference list shall contain the complete personal data identifier(s) used in its (their) place in the filing.

All references to the redacted identifiers in the case included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended without leave of the Court.

The unredacted version of the document or the reference list shall be retained by the Court as part of the record. The Court may, however, still require the party to file a redacted copy for the public file.

D. *Waiver of Protection of Personal Data Identifiers.* Users who file documents that include the items listed in Section 6(A) above waive the protections of this Section 6. Parties aggrieved by the filing of such information may seek relief by motion to the Supreme Court. (Amended effective June 16, 2016, to delete former 6.A.5.)

Rule 7. Title and Citation.

These procedures are the Mississippi Appellate E-Filing Administrative Procedures and may be cited as MAEAP. (Added effective January 1, 2017.)

APPENDIX I. FORMS

Form 1.

IN THE SUPREME COURT OF MISSISSIPPI

______________________ Appellant(s)

vs. Case No. ______________

______________________ Appellee(s)

NOTICE OF CONVENTIONAL FILING

______________________ is in paper form only and is being maintained in the case file in the Clerk's Office. This document has not been filed electronically because [examples: the document or thing cannot be converted to an electronic format, the document or thing is filed under seal, or the party is excused from filing this document or thing by court order.]

If appropriate, the document or thing has been manually served on all parties.

Date: ______________

/s/ [Name of Password Registrant]
Name of Password Registrant
Address
City, State, Zip Code
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX
E-mail: XXX@XXX.XXX

Form 2.

FORM 2

SAMPLE FORMAT

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the appellate e-filing system, which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-registered participants:

This the ______ day of ______________________, 20 ____.

/s/[Name of Password Registrant]

Name of Password Registrant (Added effective January 1, 2017.)

Appellate E-Filing
Admin. Procedures

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MISSISSIPPI RULES OF PROFESSIONAL CONDUCT

Effective July 1, 1987

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Procedures to discipline and to determine capacity to practice law, see Mississippi Code of 1972, § 73-3-301 et seq.

Proceedings pertaining to the disciplining of an attorney, see Miss. R. Civ. P. 81.

RESEARCH REFERENCES

Practice References. Geyh, Alfini, and Lubet, Shaman, Judicial Conduct and Ethics, Fifth Edition (Michie).

Joseph F. Lawless, Prosecutorial Misconduct: Law, Procedure, Forms, Fourth Edition (Michie).

PREAMBLE: A LAWYER'S RESPONSIBILITIES.

A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.

As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. See Rule 8.4.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients; employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civil influence to ensure equal access to our system of justice for all those who, because of economic or social barriers, cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an upright person while earning a satisfactory living. The Rules of Professional Conduct prescribe terms for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation to zealously protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous, and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of the responsibility compromises the independence of the profession and the public interest which it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship. (Amended effective November 3, 2005 to address lawyers' responsibilities as arbitrators, mediators and other third party neutrals and to emphasize lawyers' responsibilities to promote public understanding of the rule of law and promoting equal access to the legal system.)

SCOPE.

The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law. Compliance with the Rules, as with all laws in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in the private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intra governmental legal controversies where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

Violation of a Rule should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in the Rules should be deemed to augment any substantive legal duty of lawyers or the extra-disciplinary consequences of violating such a duty.

Moreover, these Rules are not intended to govern or affect judicial application of either the attorney-client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney-client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney-client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under the Rules has a limited discretion to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be judicially compelled only in accordance with recognized exceptions to the attorney-client and work product privileges.

The lawyer's exercise of discretion not to disclose information under Rule 1.6 should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative. Research notes were prepared to compare counterparts in the Mississippi Code of Professional Responsibility (adopted 1971, as amended) and to provide selected references to other authorities. The notes have not been adopted, do not constitute part of the Rules and are not intended to affect the application or interpretation of the Rules and Comments. (Amended effective November 3, 2005 to make technical changes in text.)

JUDICIAL DECISIONS

Jury instruction.

Although defendant attorney argued that a jury instruction setting forth the duties owed by an attorney to a client violated Miss. R. Prof. Conduct Scope, which provided that the rules were not to be used as a basis for liability against attorneys, there was no error found in giving the instruction because when it was read with all the other instructions, they fully informed the jury as to the necessary elements of proof concerning the claims. Pierce v. Cook, 992 So. 2d 612 (Miss. 2008).

TERMINOLOGY.

"Belief" or "Believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

"Consult" or "Consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

"Firm" or "Law firm" denotes a lawyer or lawyers in a private firm, lawyers employed in the legal department of a corporation or other organization and lawyers employed in a legal services organization. See Comment, Rule 1.10.

"Fraud" or "Fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

"Knowingly," "Known," or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.

"Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

"Reasonable belief" or "Reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

"Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

"Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

CLIENT-LAWYER RELATIONSHIP

Rule 1.1. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal Knowledge and Skill. — In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation. — Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence. — To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

CODE COMPARISON

DR 6-101(A)(1) provides that a lawyer shall not handle a matter "which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it." DR 6-101(A)(2) requires "preparation adequate in the circumstances"; Rule 1.1 more fully particularizes the elements of competence.

JUDICIAL DECISIONS

Client files.
Disbarment.
Ineffective assistance of counsel.
Public reprimand.
Sanctions.
— Suspension.

Client files.

Where second motion to extend time in which to serve process stated that plaintiff's law firm had withdrawn but not returned the file and the firm who took the file back had no reason to know that service had not been made prior to the withdrawal, the representations of counsel were less than forthright because counsel had in fact been counsel of record since its inception, and as counsel of record, maintained all the duties and obligations to the client. Montgomery v. SmithKline Beecham Corp., 910 So. 2d 541 (Miss. 2005).

Disbarment.

Disbarment was warranted for attorney's repeated acts, some while under suspension, of taking money from clients, promising to act as their counsel, and, through deceit, doing nothing. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

Ineffective assistance of counsel.

It appears to be problematic and inappropriate for an attorney who represents a criminal defendant at trial to represent that same defendant on appeal where the attorney intends to raise an ineffective assistance of counsel claim in that appeal. Hill v. State, 749 So. 2d 1143 (Miss. Ct. App. 1999).

Public reprimand.

Attorney received a public reprimand for violating a professional conduct rule because he took on the role of sole representation when he was not experienced enough to handle a criminal trial; the fact that another attorney reached a plea deal did not excuse placing the client in the position of having his sole attorney unprepared to try the case four years into the representation. Miss. Bar v. Pegram, 167 So. 3d 230 (Miss. 2014).

Sanctions.

— Suspension.

Appropriate sanction for attorney who negligently violated his duty to perform tasks for which he was hired, and who knowingly and intentionally lied to his clients over a two year period, was one year suspension from practice of law. Underwood v. Mississippi Bar, 618 So. 2d 64 (Miss. 1993).

Appropriate discipline for attorney charged with neglect, with prior disciplinary record for substantially similar neglect of a client's case, was sixty days suspension from practice of law. Mississippi Bar v. Hall, 612 So. 2d 1075 (Miss. 1992).

Rule 1.2. Scope of representation.

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, a lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the objectives of the representation if the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that a lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct. (Amended effective November 3, 2005.)

COMMENT

Scope of Representation. — Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. At the same time, a lawyer is not required to pursue objectives or employ means simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Law defining the lawyer's scope of authority in litigation varies among jurisdictions.

In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities. — Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Services Limited in Objectives or Means. — The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means that the lawyer regards as imprudent.

An agreement concerning the scope of representation must accord with the Rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate Rule 1.1, or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, Fraudulent and Prohibited Transactions. — A lawyer is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make a lawyer a party to the course of action. However, a lawyer may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposes is legally proper, but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required.

Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent escape of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

CODE COMPARISON

Rule 1.2(a) has no counterpart in the Disciplinary Rules of the Code. EC 7-7 states that "In certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client. . . ." EC 7-8 states that "In the final analysis, however, the ... decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client. ... In the event that the client in a nonadjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment." DR 7-101(A)(1) provides that "A lawyer shall not intentionally . . . fail to seek the lawful objections of his client through reasonable available means permitted by law. . . . A lawyer does not violate this Disciplinary Rule, however, by . . . avoiding offensive tactics. . . ."

Rule 1.2(b) has no counterpart in the Code.

Rule 1.2(c) has no counterpart in the Code.

With regard to paragraph (d), DR 7-102(A)(7) provides that a lawyer shall not "counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent." DR 7-102(A)(6) provides that a lawyer shall not "participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false." DR 7-106 provides that "A lawyer shall not . . . advise his client to disregard a standing rule of a tribunal . . . but he may take appropriate steps in good faith to test the validity of such rule or ruling." EC 7-5 states that "A lawyer should never encourage or aid his client to commit criminal acts or counsel his client on how to violate the law and avoid punishment therefor."

With regard to Rule 1.2(e), DR 2-110(C)(1)(c) provides that a lawyer may withdraw from representation if a client "insists" that the lawyer engage in "conduct that is illegal or that is prohibited under the Disciplinary Rules." DR 9-101(C) provides that "a lawyer shall not state or imply that he is able to influence improperly . . . any tribunal, legislative body or public official."

See also MSB Ethics Opinion No. 92.

JUDICIAL DECISIONS

In general.
Conflict of interest.
Sanctions.
— Disbarment.
— Suspension.
Sanctions not appropriate.
Service of process.

In general.

Where defense counsel revealed to a trial judge in an ex parte conference that a defendant had confessed to the murder and was intent on falsely testifying, the trial judge did not allow counsel to withdraw from the case and did not commit manifest error in failing to recuse herself; the judge was not the ultimate trier of fact because it was a jury trial. Scott v. State, 8 So. 3d 855 (Miss. 2008), writ of certiorari denied by 559 U.S. 941, 130 S. Ct. 1500, 176 L. Ed. 2d 117, 2010 U.S. LEXIS 1205, 78 U.S.L.W. 3480 (2010).

Client retained an attorney in a wrongful death action after her husband was shot and killed in the presence of a police officer and the case was dismissed due to the attorney's neglect or failure to comply with proper procedure. The attorney failed to cooperate in the investigation, his disciplinary record consisted of eight informal reprimands, three private reprimands, a suspension by a federal court, and the Mississippi State Bar Complaint Tribunal found the only mitigating circumstances offered by the attorney were that he had a very busy law practice and that his membership in the Mississippi State Senate took up much of his time; the Mississippi Supreme Court held that only a public reprimand was necessary, and rejected the Bar's argument that a lengthy suspension was called for. Miss. Bar v. Walls, 890 So. 2d 875 (Miss. 2004).

Subdivision (a) of this rule makes it is clear that an attorney is bound, excepting the restrictions set out in subdivision (b) through (e) of this rule, to abide by the wishes of his client in the accepting of an offer of settlement. Fortenberry v. Parker, 1999 Miss. App. LEXIS 521 (Miss. Ct. App. Aug. 10, 1999), opinion withdrawn by, substituted opinion at 754 So. 2d 561, 2000 Miss. App. LEXIS 6 (Miss. Ct. App. 2000).

Conflict of interest.

Although a lawyer may in some circumstances, and with his client's consent, limit objectives of his representation, this can never authorize attorney to engage in dual representation entailing professional decisions on his part which stand to benefit one client at the expense of the other. Hartford Accident & Indem. Co. v. Foster, 528 So. 2d 255 (Miss. 1988).

Sanctions.

— Disbarment.

Attorney was disbarred for violating Miss. R. Prof. Conduct 1.2(a), 1.3,1.4, 1.5(a), 8.1(b), and 8.4(a) and (d) where, inter alia, he caused serious injury to his client by knowingly failing to file a timely appeal from a conviction, deceiving the client as to the status of the appeal, taking the client's money, failing to inform the client of his suspension. The attorney deliberately prevaricated and lacked candor during the disciplinary proceedings and in the motion for out-of-time appeal, the attorney deceived the court by implying that another attorney, and not he, had failed to perfect timely an appeal. Shah v. Miss. Bar, 919 So. 2d 59 (Miss. 2005).

An attorney was properly disbarred, rather than suspended where he represented a client in a personal injury action that was eventually settled, deducted both his fee and the client's medical bills from the settlement and disbursed the rest to the client, and then failed to pay the medical bills. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Disbarment was the appropriate sanction for an attorney's misuse of client funds since no significant mitigating factors weighed in his favor, notwithstanding that he had not previously been disciplined, that he eventually made restitution to all parties involved, and that he made no attempt to mislead the bar or the court, as the attorney's fitness to practice law became questionable once he converted his client's funds for his own use and made no attempt to defend himself once the bar filed a formal complaint, which raised additional concerns regarding his fitness to practice law. Cotton v.

The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Three-year suspension was reversed and disbarment ordered, for attorney who misled his client, misrepresented to court that his client had agreed to terms which she in fact had not agreed to, and presented a document to the court containing a signature which was not his client's. Culpepper v. Mississippi State Bar, 588 So. 2d 413 (Miss. 1991).

— Suspension.

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Where the evidence showed that an attorney took money from a client for a real estate matter, but did not file a complaint or maintain contact with the client, it was established that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 8.1(a), 8.4(a), (c); a three-year suspension was imposed based on the fact that the attorney had been suspended twice before for violations of these same rules, but disbarment was not appropriate. Shah v. Miss. Bar, 962 So. 2d 514 (Miss. 2007).

Appropriate sanction for attorney who negligently violated his duty to perform tasks for which he was hired, and who knowingly and intentionally lied to his clients over a two year period, was one year suspension from practice of law. Underwood v. Mississippi Bar, 618 So. 2d 64 (Miss. 1993).

Sanctions not appropriate.

Attorney whose paralegal falsely communicated to a prisoner that the attorney had agreed to work on the prisoner's case did not violate Miss. R. Prof. Conduct 1.2(a) or 1.3 because no attorney-client relationship with the prisoner existed, as there was insufficient evidence that the attorney had indicated that the paralegal had authority to communicate her consent to undertake the representation of a client, and she had no knowledge of the prisoner's case or the paralegal's correspondence with the prisoner Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008).

Decision of bar complaint tribunal imposing public reprimand was reversed and the complaint dismissed, where Bar failed to meet burden of showing that attorney's actions in settling client's case constituted professional misconduct; at best, evidence revealed a miscommunication between attorney and his client. Attorney W.L. v. Mississippi Bar, 621 So. 2d 235 (Miss. 1993).

Service of process.

Where second motion to extend time in which to serve process stated that plaintiff's law firm had withdrawn but not returned the file and the firm who took the file back had no reason to know that service had not been made prior to the withdrawal, the representations of counsel were less than forthright because counsel had in fact been counsel of record since its inception, and as counsel of record, maintained all the duties and obligations to the client. Montgomery v. SmithKline Beecham Corp., 910 So. 2d 541 (Miss. 2005).

Rule 1.3. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's workload should be controlled so that each matter can be handled adequately.

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substances, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

CODE COMPARISON

DR 6-101(A)(3) requires that a lawyer not "neglect a legal matter entrusted to him." EC 6-4 states that a lawyer should "give appropriate attention to his legal work." Canon 7 states that "a lawyer should represent a client zealously within the bounds of the law." DR 7-101(A)(1) provides that "a lawyer shall not intentionally . . . fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules. . . ." DR 7-101(A)(3) provides that "a lawyer shall not intentionally . . . prejudice or damage his client during the course of the professional relationship. . . ."

JUDICIAL DECISIONS

Ethical obligation to represent.
Ineffective assistance of counsel.
Sanctions.
— Disbarment.
— Suspension.
Sanctions not appropriate.
Service of process.

Ethical obligation to represent.

In determining that a debtor was entitled to attorneys' fees incurred in defending a creditor's appeal of a dischargeability proceeding, a bankruptcy court rejected creditor's argument that debtor's attorneys "chose" to represent him in the appeals. Rather, those attorneys were ethically obligated by the Mississippi Rules of Professional Conduct to represent him throughout the pendency of the adversary proceeding, including on appeal, and by employing an experienced appellate attorney to assist them, they were exercising their ethical obligation to represent debtor zealously and diligently. Country Credit, LLC v. Martin (In re Martin), — Bankr. —, 2016 Bankr. LEXIS 4612 (Bankr. S.D. Miss. Oct. 24, 2016).

Ineffective assistance of counsel.

It appears to be problematic and inappropriate for an attorney who represents a criminal defendant at trial to represent that same defendant on appeal where the attorney intends to raise an ineffective assistance of counsel claim in that appeal. Hill v. State, 749 So. 2d 1143 (Miss. Ct. App. 1999).

Sanctions.

Attorney violated Miss. R. Prof. Conduct 1.3 where he failed to file an appeal brief for his client in a criminal case, and neither Miss. R. App. P. 2, 3, or 4 nor Miss Code Ann. § 99-39-5(i) provided an excuse or established good cause for the violation of Rule 1.3. Crosby v. Miss. Bar, 268 So. 3d 520 (Miss. 2018).

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Where the evidence showed that an attorney took money from a client for a real estate matter, but did not file a complaint or maintain contact with the client, it was established that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 8.1(a), 8.4(a), (c); a three-year suspension was imposed based on the fact that the attorney had been suspended twice before for violations of these same rules, but disbarment was not appropriate. Shah v. Miss. Bar, 962 So. 2d 514 (Miss. 2007).

Client retained an attorney in a wrongful death action after her husband was shot and killed in the presence of a police officer and the case was dismissed due to the attorney's neglect or failure to comply with proper procedure. The attorney failed to cooperate in the investigation, his disciplinary record consisted of eight informal reprimands, three private reprimands, a suspension by a federal court, and the Mississippi State Bar Complaint Tribunal found the only mitigating circumstances offered by the attorney were that he had a very busy law practice and that his membership in the Mississippi State Senate took up much of his time; the Mississippi Supreme Court held that only a public reprimand was necessary, and rejected the Bar's argument that a lengthy suspension was called for. Miss. Bar v. Walls, 890 So. 2d 875 (Miss. 2004).

— Disbarment.

Attorney was disbarred for violating Miss. R. Prof. Conduct 1.2(a), 1.3,1.4, 1.5(a), 8.1(b), and 8.4(a) and (d) where, inter alia, he caused serious injury to his client by knowingly failing to file a timely appeal from a conviction, deceiving the client as to the status of the appeal, taking the client's money, failing to inform the client of his suspension. The attorney deliberately prevaricated and lacked candor during the disciplinary proceedings and in the motion for out-of-time appeal, the attorney deceived the court by implying that another attorney, and not he, had failed to perfect timely an appeal. Shah v. Miss. Bar, 919 So. 2d 59 (Miss. 2005).

An attorney was properly disbarred, rather than suspended where he represented a client in a personal injury action that was eventually settled, deducted both his fee and the client's medical bills from the settlement and disbursed the rest to the client, and then failed to pay the medical bills. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Disbarment was the appropriate sanction for an attorney's misuse of client funds since no significant mitigating factors weighed in his favor, notwithstanding that he had not previously been disciplined, that he eventually made restitution to all parties involved, and that he made no attempt to mislead the bar or the court, as the attorney's fitness to practice law became questionable once he converted his client's funds for his own use and made no attempt to defend himself once the bar filed a formal complaint, which raised additional concerns regarding his fitness to practice law. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Disbarment was warranted for attorney's repeated acts, some while under suspension, of taking money from clients, promising to act as their counsel, and, through deceit, doing nothing. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

— Suspension.

Attorney's unprofessional and unethical conduct, together with extensive record of disciplinary sanctions for similar conduct, warranted imposition of public reprimand, unconditional suspension from practice of law in state courts for one year, and requirement that attorney pass all sections of bar exam before filing petition for reinstatement. Mississippi Bar v. Alexander, 697 So. 2d 1164 (Miss. 1997).

Where attorney engaged to file complaint to remove cloud on title never filed an actual complaint, but instead forged clerk's signature, obtained court's stamp and rolled date back, and then stamped alleged complaint as filed, attorney was suspended from practice of law for eighteen months. Asher v. Mississippi Bar, 661 So. 2d 722 (Miss. 1995).

Appropriate sanction for attorney who negligently violated his duty to perform tasks for which he was hired, and who knowingly and intentionally lied to his clients over a two year period, was one year suspension from practice of law. Underwood v. Mississippi Bar, 618 So. 2d 64 (Miss. 1993).

Appropriate discipline for attorney charged with neglect, with prior disciplinary record for substantially similar neglect of a client's case, was sixty days suspension from practice of law. Mississippi Bar v. Hall, 612 So. 2d 1075 (Miss. 1992).

Sanctions not appropriate.

Attorney whose paralegal falsely communicated to a prisoner that the attorney had agreed to work on the prisoner's case did not violate Miss. R. Prof. Conduct 1.2(a) or 1.3 because no attorney-client relationship with the prisoner existed, as there was insufficient evidence that the attorney had indicated that the paralegal had authority to communicate her consent to undertake the representation of a client, and she had no knowledge of the prisoner's case or the paralegal's correspondence with the prisoner. Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008).

Decision of bar complaint tribunal imposing public reprimand was reversed and the complaint dismissed, where Bar failed to meet burden of showing that attorney's actions in settling client's case constituted professional misconduct; at best, evidence revealed a miscommunication between attorney and his client. Attorney W.L. v. Mississippi Bar, 621 So. 2d 235 (Miss. 1993).

Service of process.

Where second motion to extend time in which to serve process stated that plaintiff's law firm had withdrawn but not returned the file and the firm who took the file back had no reason to know that service had not been made prior to the withdrawal, the representations of counsel were less than forthright because counsel had in fact been counsel of record since its inception, and as counsel of record, maintained all the duties and obligations to the client. Montgomery v. SmithKline Beecham Corp., 910 So. 2d 541 (Miss. 2005).

Rule 1.4. Communication.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter.

Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injury or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consultation.

Withholding Information. — In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

CODE COMPARISON

This Rule has no direct counterpart in the Disciplinary Rules of the Code. DR 6-101(A)(3) provides that a lawyer shall not "neglect a legal matter entrusted to him." DR 9-102(B)(1) provides that a lawyer "shall promptly notify a client of the receipt of his funds, securities, or other properties." EC 7-8 states that "a lawyer should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations." EC 9-2 states that "a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client."

JUDICIAL DECISIONS

Sanctions.
— Disbarment.
— Suspension.
Sanctions not appropriate.
Service of process.

Sanctions.

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Where the evidence showed that an attorney took money from a client for a real estate matter, but did not file a complaint or maintain contact with the client, it was established that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 8.1(a), 8.4(a), (c); a three-year suspension was imposed based on the fact that the attorney had been suspended twice before for violations of these same rules, but disbarment was not appropriate. Shah v. Miss. Bar, 962 So. 2d 514 (Miss. 2007).

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— Disbarment.

Attorney was disbarred for violating Miss. R. Prof. Conduct 1.2(a), 1.3,1.4, 1.5(a), 8.1(b), and 8.4(a) and (d) where, inter alia, he caused serious injury to his client by knowingly failing to file a timely appeal from a conviction, deceiving the client as to the status of the appeal, taking the client's money, failing to inform the client of his suspension. The attorney deliberately prevaricated and lacked candor during the disciplinary proceedings and in the motion for out-of-time appeal, the attorney deceived the court by implying that another attorney, and not he, had failed to perfect timely an appeal. Shah v. Miss. Bar, 919 So. 2d 59 (Miss. 2005).

An attorney was properly disbarred, rather than suspended where he represented a client in a personal injury action that was eventually settled, deducted both his fee and the client's medical bills from the settlement and disbursed the rest to the client, and then failed to pay the medical bills. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Disbarment was the appropriate sanction for an attorney's misuse of client funds since no significant mitigating factors weighed in his favor, notwithstanding that he had not previously been disciplined, that he eventually made restitution to all parties involved, and that he made no attempt to mislead the bar or the court, as the attorney's fitness to practice law became questionable once he converted his client's funds for his own use and made no attempt to defend himself once the bar filed a formal complaint, which raised additional concerns regarding his fitness to practice law. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Disbarment was warranted for attorney's repeated acts, some while under suspension, of taking money from clients, promising to act as their counsel, and, through deceit, doing nothing. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

— Suspension.

Attorney's unprofessional and unethical conduct, together with extensive record of disciplinary sanctions for similar conduct, warranted imposition of public reprimand, unconditional suspension from practice of law in state courts for one year, and requirement that attorney pass all sections of bar exam before filing petition for reinstatement. Mississippi Bar v. Alexander, 697 So. 2d 1164 (Miss. 1997).

Attorney who failed to prosecute appeal and failed to communicate with client was suspended from practice of law for a period of six months. Terrell v. Mississippi Bar, 662 So. 2d 586 (Miss. 1995).

Where attorney engaged to file complaint to remove cloud on title never filed an actual complaint, but instead forged clerk's signature, obtained court's stamp and rolled date back, and then stamped alleged complaint as filed, attorney was suspended from practice of law for eighteen months. Asher v. Mississippi Bar, 661 So. 2d 722 (Miss. 1995).

Appropriate sanction for attorney who negligently violated his duty to perform tasks for which he was hired, and who knowingly and intentionally lied to his clients over a two year period, was one year suspension from practice of law. Underwood v. Mississippi Bar, 618 So. 2d 64 (Miss. 1993).

Appropriate discipline for attorney charged with neglect, with prior disciplinary record for substantially similar neglect of a client's case, was sixty days suspension from practice of law. Mississippi Bar v. Hall, 612 So. 2d 1075 (Miss. 1992).

Sanctions not appropriate.

Circuit court exceeded its authority in sanctioning an attorney and entering a judgment in favor of a client because when the circuit court sanctioned the attorney, it was not to regulate its proceedings, but as a punishment for violating a rule of discipline (the attorney's "obstinate and unreasonable refusal to provide an itemized statement" and "abusive litigation practice"), and the Supreme Court of Mississippi was vested with the exclusive and inherent jurisdiction over matters pertaining to attorney discipline. Byers v. Turner, 189 So. 3d 1281 (Miss. Ct. App. 2016).

Decision of bar complaint tribunal imposing public reprimand was reversed and the complaint dismissed, where Bar failed to meet burden of showing that attorney's actions in settling client's case constituted professional misconduct; at best, evidence revealed a miscommunication between attorney and his client. Attorney W.L. v. Mississippi Bar, 621 So. 2d 235 (Miss. 1993).

Disbarment was warranted for attorney's repeated acts, some while under suspension, of taking money from clients, promising to act as their counsel, and, through deceit, doing nothing. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

Service of process.

Where second motion to extend time in which to serve process stated that plaintiff's law firm had withdrawn but not returned the file and the firm who took the file back had no reason to know that service had not been made prior to the withdrawal, the representations of counsel were less than forthright because counsel had in fact been counsel of record since its inception, and as counsel of record, maintained all the duties and obligations to the client. Montgomery v. SmithKline Beecham Corp., 910 So. 2d 541 (Miss. 2005).

Rule 1.5. Fees.

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

COMMENT

Basis or Rate of Fee. — When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally fixing the fee. When developments occur during the representation that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of a misunderstanding. Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment. — A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(j). However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the lawyer's special knowledge of the value of the property.

An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in such a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services will probably be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the lawyer should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

Paragraph (d)(1) does not prohibit a contingent fee agreement for the collection of past due alimony or support. See MSB Ethics Opinion No. 88.

Division of Fee. — A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee on either the basis of the proportion of services they render or by agreement between the participating lawyers if all assume responsibility for the representation as a whole and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive. Joint responsibility for the representation entails the obligations stated in Rule 5.1 for purposes of the matter involved.

Disputes Over Fee. — If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

CODE COMPARISON

DR 2-106(A) provides that "A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee." DR 2-106(B) provides that "A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." DR 2-106(B) further provides that "Factors to be considered... in determining... reasonableness . . . include . . .: (1) The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly. (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. (3) The fee customarily charged in the locality for similar services. (4) The amount involved and the results obtained. (5) The time limitations imposed by the client or by the circumstances. (6) The nature and length of the professional relationship with the client. (7) The experience, reputation, and ability of the lawyer or lawyers performing the services. (8) Whether the fee is fixed or contingent." The Rule includes the factor of ability to pay; a person of ample means may justly be charged more for a service, and a person of limited means less, other factors being the same. EC 2-17 states that "A lawyer should not charge more than a reasonable fee. . . ."

There is no counterpart to Rule 1.5(b) in the Disciplinary Rules of the Code. EC 2-19 states that "It is usually beneficial to reduce to writing the understanding of the parties concerning the fee, particularly when it is contingent."

With regard to Rule 1.5(c), DR 2-106(C) prohibits "a contingent fee in a criminal case."

With regard to Rule 1.5(d), DR2-107(A) permits division of fees only if: "(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made. (2) The division is in proportion to the services performed and responsibility assumed by each. (3) The total fee does not exceed clearly reasonable compensation. . . ." Rule 1.5(d) permits division without regard to the services rendered by each lawyer if they assume joint responsibility for the representation.

See also MSB Ethics Opinion Nos. 40, 59, 88, 91, 92 and 100.

JUDICIAL DECISIONS

Disputes over fee.
Division of fee.
Fee agreement.
Reasonableness of fee.
Sanctions.
— Disbarment.
Illustrative cases.

Disputes over fee.

In this declaratory judgment action, plaintiff was awarded attorney's fees and expenses because the time billed by plaintiff in pursuit of the declaratory judgment, including the time billed pursuing summary judgment, was neither excessive nor unreasonable where plaintiff's briefs were thoroughly researched and well written-a fact that greatly contributed to its success in this proceeding. MGM Resorts Miss., Inc. v. Thyssenkrupp Elevator Corp., — F. Supp. 3d —, 2015 U.S. Dist. LEXIS 118483 (N.D. Miss. Sept. 4, 2015).

Trial court chancellor did not abuse his discretion in awarding attorney fees on an hourly basis after he voided the lawyer's contingency fee contract with the former administratrix, where it properly considered the eight factors enumerated in Miss. R. Prof. Conduct 1.5 that the Supreme Court established for determining reasonable attorney fees. Gillis v. Gillies (In re Estate of Gillies), 830 So. 2d 640 (Miss. 2002).

Attorney fees awarded in a case involving an employer's bad faith failure to pay a worker's compensation claim were improperly granted because the trial court abused its discretion by making inaccurate findings regarding the factors outlined in determining the reasonableness of such an award. Miss. Power & Light Co. v. Cook, 832 So. 2d 474 (Miss. 2002).

Division of fee.

Circuit court was in error in determining that the first law firm contributed 95 percent of the effort to bring the case to a successful conclusion because the negotiations of the liens and the estate work done by the second law firm represented a significant contribution to the case's overall successful resolution, which the circuit court failed to acknowledge; the circuit court abused its discretion in apportioning attorney fees between the law firms. Bailey Law Pllc v. Morgan & Morgan Pllc (in re Estate o f Bourne), — So. 3d —, 2019 Miss. App. LEXIS 416 (Miss. Ct. App. Aug. 27, 2019).

Circuit court's apportionment of attorney fees displayed an abuse of discretion because the percentage of the fee allocated to a second law firm was unreasonable; the fee was substantial, and the circuit court was required to analyze the case for the contribution of each counsel according to the McKee factors and the rule, but it failed to undertake the analysis required under Mississippi law and made only minimal and erroneous findings to support the award of fees. Bailey Law Pllc v. Morgan & Morgan Pllc (in re Estate o f Bourne), — So. 3d —, 2019 Miss. App. LEXIS 416 (Miss. Ct. App. Aug. 27, 2019).

Chancellor did not abuse his discretion in awarding attorney's fees in a minor's personal injury action because, while the chancellor did not recite the case law or professional conduct factors in explaining his division of fees between the attorney and his successor, the chancellor correctly referenced the Uniform Chancery Court Rules, the attorney had done very little work on the action at the time of his termination and did not submit his contract for approval before being terminated. Foster v. Kotsakos, 147 So. 3d 896 (Miss. Ct. App. 2014).

Under Miss. R. Prof. Conduct 1.5, a Mississippi attorney who performed the vast majority of the work on a wrongful death contingency case against a railroad was entitled to 90 percent of the attorney's fees, and the Louisiana attorney who associated with the Mississippi attorney was entitled to 10 percent. In re Guardianship v. Barrett, 31 So. 3d 1285 (Miss. Ct. App. 2010).

Fee agreement.

Chancellor was not manifestly wrong in approving contingent fee recovery under unusual facts of case, despite fact that fee agreement was not reduced to writing. Lowrey v. Will of Smith, 543 So. 2d 1155 (Miss. 1989).

Reasonableness of fee.

In plaintiff's successful claim under the Uniformed Services Employment and Remployment Rights Act, although the trial court's opinion that attorney fees in the amount of $2,800 was sufficient for all litigation costs and trial expenses might very well be reasonable, the trial judge's order was void of any explanation for that figure, and the $2,800 award was reversed and remanded for the trial court to reconsider what amount of attorney fees would be reasonable in light of the number of hours worked, the hourly rate of plaintiff's counsel, and the eight factors listed in the Mississippi Rules of Professional Conduct Rule 1.5. Webster v. Miss. Dep't of Wildlife, Fisheries & Parks, 257 So. 3d 277 (Miss. 2018).

Sanctions.

Because the trial court's finding of multiple, intentional discovery violations was erroneous, so too was its award of attorney fees and expenses in amount in excess of $200,000 to plaintiffs (presumably under Miss. R. Civ. P. 37(e)), although plaintiffs were owed some amount of reasonable attorney fees and expenses; the court should have assessed the reasonable expenses incurred by plaintiffs caused by defendant's compliance with the court's ruling two days later than ordered. Ford Motor Co. v. Tennin, 960 So. 2d 379 (Miss. 2007).

— Disbarment.

Attorney was disbarred for violating Miss. R. Prof. Conduct 1.2(a), 1.3,1.4, 1.5(a), 8.1(b), and 8.4(a) and (d) where, inter alia, he caused serious injury to his client by knowingly failing to file a timely appeal from a conviction, deceiving the client as to the status of the appeal, taking the client's money, failing to inform the client of his suspension. The attorney deliberately prevaricated and lacked candor during the disciplinary proceedings and in the motion for out-of-time appeal, the attorney deceived the court by implying that another attorney, and not he, had failed to perfect timely an appeal. Shah v. Miss. Bar, 919 So. 2d 59 (Miss. 2005).

Illustrative cases.

Because the case was taken on contingency, the court of appeals would not expect detailed time records, which proved even more reasoning for the need of a detailed evaluation of the McKee factors. Bailey Law Pllc v. Morgan & Morgan Pllc (in re Estate o f Bourne), — So. 3d —, 2019 Miss. App. LEXIS 416 (Miss. Ct. App. Aug. 27, 2019).

Bank's attorney's fees were allowed, less a $ 19.04 discrepancy between the proof of claim and the invoices, as the case was a simple debt collection action followed by a foreclosure that did not present a novel question or require an inordinate amount of time, and the hourly fee and the amount of time spent were reasonable and customary for the locality; the debtor did not support his objection to the listed fees, and a previous balance was not included in the bank's claim. In re Gray, — Bankr. —, 2019 Bankr. LEXIS 934 (Bankr. N.D. Miss. Mar. 28, 2019).

Trial court had no need to conduct a reasonableness analysis because the award was for the purpose of the sanctions, and the sanctioned party did not allege that the fees were actually unreasonable nor give any reasons why the fees were unreasonable. Smith v. Hickman, Goza & Spragins, PLLC, 265 So. 3d 139 (Miss. 2019).

Trial court was not manifestly wrong in its determination that the remaining fees were reasonable, as was the overall amount sought, because it found probative the fact that the amount of attorneys' fees was far less than the percentage recovery of attorneys' fees generally seen in collection case. Biel REO, LLC v. Lee Freyer Kennedy Crestview, LLC, 242 So. 3d 833 (Miss. 2018).

Trial court did not err in awarding attorneys' fees because it considered the factors and found that the overall attorneys' fees sought, excluding for other litigation, were reasonable. Biel REO, LLC v. Lee Freyer Kennedy Crestview, LLC, 242 So. 3d 833 (Miss. 2018).

Where the court found that debt owed by debtor was nondischargeable in the amount of $2,903.89, and the creditor's attorney requested $11,988.75 in fees and costs, considering the Miss. R. Prof. Conduct 1.5 factors and the lodestar amount, the court reduced the amount requested by 50% because it found no basis to justify a fee award so much greater than the amount recovered. Hometown Credit, LLC v. Peters (In re Peters), — Bankr. —, 2017 Bankr. LEXIS 861 (Bankr. S.D. Miss. Mar. 28, 2017).

Where debtor agreed to nondischargeable judgment in amount of $1,347.90 on underlying debt and creditor requested $5,080 in attorney fees, court, applying factors in this Rule, reduced amount to $1,270 because there was no basis to justify award of fees so much greater than amount recovered, the customary fee for actions of this type was one-third of the amount of the indebtedness and the questions presented were not novel or difficult. Pikco Finance, Inc. v. Staten (In re Staten), 559 B.R. 666 (Bankr. S.D. Miss. 2016).

Award of attorneys' fees had to be vacated and remanded to the trial court, and on remand the trial court was to determine and award reasonable attorneys' fees based on findings of fact and conclusions of law related to the McKee factors. Miss. Valley Silica Co. v. Barnett, 227 So. 3d 1102 (Miss. Ct. App. 2016), writ of certiorari dismissed by 2017 Miss. LEXIS 401 (Miss. Sept. 28, 2017).

Award of attorny's fees was not an abuse of discretion because there was evidence of the actual attorney's fees homeowners incurred; since there was a basis for the award of punitive damages, an award of attorney's fees was proper. Woodkrest Custom Homes Inc. v. Cooper, 108 So. 3d 460 (Miss. Ct. App. 2013).

In a products liability action alleging three welding rod manufacturers' failure to warn, the court granted the married couple's request for an attorney's fee award; exercising its discretion under Fed. R. Civ. P. 54(d) and recognizing the factors for determining a reasonable fee, set forth in Miss. R. Prof. Conduct 1.5, as well as the legislative dictated regarding reasonable fees in Miss. Code Ann. § 9-1-41, the court allowed the manufacturers to either stipulate to the fee amount requested by the couple, $2,173,185.73, or to provide the court with a challenge to the couple's fee request within 28 days from the date of the court's order. Jowers v. BOC Group, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 28806 (S.D. Miss. Apr. 1, 2009), vacated in part by 617 F.3d 346, 2010 U.S. App. LEXIS 17862 (5th Cir. Miss. Aug. 26, 2010).

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

In a complex contract case regarding damages to equipment owned by a utilities commission, a trial court did not abuse its discretion by awarding fees to two attorneys in the case, as it was clear from the language of the trial judge's order that the judge did in fact apply the reasonableness factors under McKee v. McKee, 418 So. 2d 764 (Miss 1982), even though he did not detail his reasoning; moreover, it was unnecessary to determine whether McKee predated Miss. Code Ann. § 9-1-41. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, 964 So. 2d 1100 (Miss. 2007).

When a contractor damaged a utilities commission's equipment in the process of testing a control system the contractor installed, and the commission was awarded attorney fees in the subsequent litigation, the trial court did not abuse its discretion because it was clear the judge applied the factors adopted from Miss. R. Prof. Conduct 1.5(a), even though it did not detail its reasoning. Upchurch Plumbing, Inc. v. Greenwood Utils. Comm'n, — So. 2d —, 2007 Miss. LEXIS 225 (Miss. Apr. 19, 2007), opinion withdrawn by, substituted opinion at 964 So. 2d 1100, 2007 Miss. LEXIS 495 (Miss. Aug. 30, 2007).

Pursuant to the indemnification clause in the contract voluntarily entered into by both the marketer and the manufacturer, the chancellor did not err in its judgment because the amount of attorney fees assessed against the manufacturer was not an abuse of discretion; it was evident that the chancellor painstakingly addressed the relevant factors regarding the attorney fees under Miss. R. Prof. Conduct 1.5(a). Microtek Med., Inc. v. 3M Co., 942 So. 2d 122 (Miss. 2006).

Award of attorney fees equal to 27 times a contempt award was not an abuse of discretion, where work was required that was not typically necessary in a routine contempt action (including research on the duration of appointment of a special chancellor, the preparation and filing of a motion for clarification of order of appointment, the presentment of an executed recusal order of the chancellors to the court, a conference with the Department of Human Services, conferences with an expert witness, in addition to the normal communications and telephone calls, preparation for the hearing, and the marshaling of exhibits), and the chancellor, who was in the unique position to observe the parties and their demeanor, found that the mother was in willful and contumacious contempt of the child custody order and that the fee award was reasonable and necessary. Mabus v. Mabus, 910 So. 2d 486 (Miss. 2005).

Trial court's grant of the county's motion for voluntary dismissal without prejudice was an adverse and final appealable order, and the award of attorney's fees under Miss. R. Civ. P. 41(a)(2) was well supported but the reasonableness of fee amount was never substantiated, therefore the fee award was vacated and the case was remanded for the trial court to determine the reasonableness of fees pursuant to the factors provided in Miss. R. Prof. Conduct 1.5. BellSouth Pers. Commun., LLC v. Bd. of Supervisors, 912 So. 2d 436 (Miss. 2005).

In a case involving the destruction of trees, a trial court erred by basing an award of attorney fees on the amount recovered from a lumber company because the trial court should have examined the fees requested under Miss. R. Prof. Conduct 1.5 for reasonableness. Smith v. Parkerson Lumber, Inc., 888 So. 2d 1197 (Miss. Ct. App. 2004).

Despite finding an entitlement to attorney's fees, the couple did not offer sufficient proof upon which to make an actual award of attorney's fees; because there had to be a rational basis upon which any award of attorney's fees was made, the appellate court could not say that the decision not to enter an actual award was error, and the trial court's determination that there was insufficient proof upon which to enter an actual award of attorney's fees was not a modification of a final judgment. Romney v. Barbetta, 881 So. 2d 958 (Miss. Ct. App. 2004).

Where the attorneys in fact entered into a contract of employment with an attorney to pursue a personal injury claim on the ward's behalf, and the attorney, primarily out of caution, later submitted a proposed settlement to the chancery court for approval, the chancery court abused its discretion in reducing the lawyer's fee from a 40 percent contingency fee as provided in the contract to a 33 1/3 percent contingency fee. The contract was not one entered into pursuant to a traditional probate matter, it was not a contract within the parameters of Miss. Unif. Ch. Ct. R. 6.12, and the practical effect of the chancellor's decision, upheld by the court of appeals, was a judicial abrogation of the provisions of the Uniform Durable Power of Attorney Act found in Miss. Code Ann. §§ 87-3-101 through 87-3-113; the chancellor also failed to analyze the reasonableness of the attorneys' fees by application of the eight factors listed under Miss. R. Prof. Conduct 1.5. In re Savell v. Renfroe, 876 So. 2d 308 (Miss. 2004).

Judge did not err in awarding the attorneys only a small percentage of the settlement they obtained on behalf of the estate, as this followed from his decision to void their contingency fee agreement and award fees based on quantum meruit. Gillis v. Gillies (In re Estate of Gillies), — So. 2d —, 2001 Miss. LEXIS 291 (Miss. Oct. 31, 2001), opinion withdrawn by, substituted opinion at 830 So. 2d 640, 2002 Miss. LEXIS 341 (Miss. Nov. 14, 2002).

A chancellor did not abuse her discretion when she applied the factors of this rule and awarded attorneys' fees and documented expenses. Mauck v. Columbus Hotel Co., 741 So. 2d 259 (Miss. 1999).

The chancellor did not abuse her discretion when she awarded attorneys' fees based on an application and complete analysis of the eight factors contained in the rule. Mauck v. Columbus Hotel Co., — So. 2d —, 1998 Miss. LEXIS 577 (Miss. Nov. 25, 1998), opinion withdrawn by, substituted opinion at, remanded by 1999 Miss. LEXIS 203 (Miss. June 17, 1999).

RESEARCH REFERENCES

ALR. Validity and enforceability of express fee — splitting agreements between attorneys. 11 A.L.R.6th 587.

Rule 1.6. Confidentiality of information.

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was

involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

(6) to comply with other law or a court order.

(c) A lawyer who participates in an intervention on a lawyer, judge or law student by the Lawyers and Judges Assistance Committee shall not reveal any information learned through the intervention from or relating to the lawyer, judge or law student on whom the intervention is conducted except as may be permitted by the Rules of Discipline of the Mississippi Bar or required by law or court order.

(d) A lawyer shall reveal information to the Lawyers and Judges Assistance Committee in accordance with approved monitoring procedures of the Lawyers and Judges Assistance Committee relating to the status of compliance of a lawyer, judge or law student with the terms and conditions imposed upon the lawyer, judge or law student by the Lawyers and Judges Assistance Committee.

(e) A lawyer may reveal such information to the extent required by law or court order. (Amended June 23, 1994; amended April 18, 2002; amended effective November 3 , 2005 to add circumstances under which disclosure of otherwise confidential information is permitted.)

COMMENT

The lawyer is part of a judicial system charged with upholding the law. One of the lawyer's functions is to advise clients so that they avoid any violation of the law in the proper exercise of their rights.

The observance of the ethical obligation of a lawyer to hold inviolate confidential information of the client not only facilitates the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance.

A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Terminology for definition of "informed consent." This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

The principle of client-lawyer confidentiality is given effect by related bodies of law : the attorney-client privilege the work product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client and the work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever the source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy goals that their representation is designed to advance.

Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure. — Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter.

Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client. — Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

Paragraph (b)(2) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in the Terminology section, that is reasonably certain to result in substantial injury to the financial or property interest of another and in furtherance of which the client has used or is using that lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(2) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances.

Paragraph (b)(3) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information related to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(3) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(4) permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

A lawyer entitled to a fee is permitted by paragraph (b)(5) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

Withdrawal. — If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1).

After withdrawal the lawyer is required to refrain from making disclosure of the clients' confidences, except as otherwise provided in Rule 1.6. Neither this rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like.

Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Dispute Concerning Lawyer's Conduct. — Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent that lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(5) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced. Where practicable and not prejudicial to the lawyer's ability to establish the defense, the lawyer should advise the client of the third party's assertion and request that the client respond appropriately. In any event, disclosure should be no greater than the lawyer reasonably believes is necessary to vindicate innocence.

As stated above, the lawyer must make every effort practicable to avoid unnecessary disclosure of information relating to a representation, to limit disclosure to those having the need to know it, and to obtain protective orders or make other arrangements minimizing the risk of disclosure.

Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this rule and requires disclosure, paragraph (b)(6) permits the lawyer to make such disclosures as are necessary to comply with the law.

A lawyer may be ordered to reveal information, relating to the representation of a client, by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(6) permits the lawyer to comply with the court's order.

Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other person having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (b)(1) through (b)(6). In exercising the discretion conferred by this rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this rule. Disclosure may be required, however, by other rules. Some rules require disclosure only if such disclosure would be permitted by paragraph (b). See Rules 4,1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this rule.

Acting competently to preserve confidentiality. — A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See rules 1.1, 5.1 and 5.3.

When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule.

Disclosures otherwise required or authorized. — The attorney-client privilege is differently defined in various jurisdictions. If a lawyer is called as a witness to give testimony concerning a client, absent waiver by the client, Rule 1.6(a) requires the lawyer to invoke the privilege when it is applicable. The lawyer must comply with the final orders of a court or other tribunal of competent jurisdiction requiring the lawyer to give information about the client.

The Rules of Professional Conduct in various circumstances permit or require a lawyer to disclose information relating to the representation. See Rules 2.2, 2.3, 3.3 and 4.1. In addition to these provisions, a lawyer may be obligated or permitted by other provisions of the law to give information about a client. Whether another provision of law supersedes Rule 1.6 is a matter of interpretation beyond the scope of these Rules, but a presumption should exist against such a supersession.

Former client. — The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9.

[Amended June 23, 1994; amended effective November 3, 2005.]

CODE COMPARISON

The general principle of confidentiality is enlarged, under Rule 1.6, in that the confidentiality requirement applies to all information about a client "relating to the representation." Under the Code, DR 4-101, the requirement applies only to information governed by the client-attorney privilege and to information "gained in" the professional relationship that "the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." Rule 1.6 thus imposes confidentiality on information relating to the representation even if it is acquired before or after the relationship existed. It does not require the client to indicate information that is to be confidential, or permit the lawyer to speculate whether particular information might be embarrassing or detrimental. Furthermore, this definition avoids the constricted definition of "confidence" that appears in some decisions.

See Allegaert v. Perot, 434 F.Supp. 790 (S.D.N.Y.1977); Moritz v. Medical Protective Co., 428 F.Supp. 865 (W.D.Wis.1977); City of Wichita v. Chapman, 214 Kan. 575, 521 P.2d 589 (Kan.1974).

Rule 1.6(a) permits a lawyer to disclose information where impliedly authorized in order to carry out the representation. Under DR 4-101(B) and (C), a lawyer cannot disclose "confidences" unless the client first expressly consents after disclosure.

Rule 1.6(b)(1) is similar to DR 4-101(C)(3) which provides that a lawyer "may reveal the intention of his client to commit a crime and the information necessary to prevent the crime." This option exists regardless of the seriousness of the proposed crime.

With regard to Rule 1.6(b)(2), DR 4-101(C)(4) provides that a lawyer may reveal "confidences or secrets necessary to establish or collect his fee or to defend himself or his employers or associates against an accusation of wrongful conduct." Rule 1.6(b)(2) enlarges the exception to include disclosure of information relating to claims by the lawyer other than for his fee; for example, recovery of property from the client. It narrows the exception dealing with defense against claims of wrongful conduct to situations where the client's conduct was involved.

Rule 1.6(c) is substantially similar to DR 4-101(C)(2).

See MSB Ethics Opinion Nos. 57, 95, 98 and 101.

JUDICIAL DECISIONS

Criminal act.
Entitlement to defend.
Paralegal's prior work for opposing party's prior counsel.
Potential perjury of client.

Criminal act.

Neither an attorney nor his law clerk could be faulted for providing a client's mental health records to law enforcement officials where the attorney, in good faith, believed that the client may have been committing a crime. Crawford v. State, 716 So. 2d 1028 (Miss. 1998), cert. denied, 525 U.S. 1021, 119 S. Ct. 550, 142 L. Ed. 2d 458 (1998).

Entitlement to defend.

Circuit court erred in denying summary judgment to the law firm on the client's claim of direct breach of fiduciary duty. All defendants were legally entitled to defend themselves and none of the client's claimed damages purported to related to conduct arising on or after his demand on November 12, 2004, which was the initial date when the law firm was apprised of the "secret and covert" affair between the attorney and the client's wife. Baker Donelson Bearman Caldwell & Berkowitz, P.C. v. Seay, 42 So. 3d 474 (Miss. 2010).

Paralegal's prior work for opposing party's prior counsel.

Where a paralegal worked for defendant lenders' prior counsel, and then worked for different plaintiff consumers' counsel, and all the consumer fraud cases involved the same lenders, claims and documents, and nearly identical facts, a substantial relationship existed requiring disqualification of plaintiff consumers' counsel under Miss. R. Prof. Conduct 1.6, 1.9(a), and 1.10(b). Owens v. First Family Fin. Servs., 379 F. Supp. 2d 840 (S.D. Miss. 2005).

Potential perjury of client.

Defendant was denied his right to a fair trial because the trial judge, sitting as finder of fact on defendant's motion to suppress, was informed by defense counsel that defendant had confessed to counsel that he committed the crime and that he intended to offer perjured testimony at trial, and therefore, the trial judge should have recused herself from hearing the motion to suppress, and her failure to do so deprived defendant of his right to due process. Scott v. State, 8 So. 3d 871 (Miss. Ct. App. 2008), reversed by 8 So. 3d 855, 2008 Miss. LEXIS 589 (Miss. 2008).

RESEARCH REFERENCES

Law Reviews — Law Firm Disqualification and Nonlawyer Employees: A Proposal for a Consistent Analysis, 26 Miss. C. L. Rev. 163, 2006/2007.

Rule 1.7. Conflict of interest: general rule.

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes:

(1) the representation will not adversely affect the relationship with the other client; and

(2) each client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the adverse representation and the advantages and risks involved.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless the lawyer reasonably believes:

(1) the representation will not be adversely affected; and

(2) the client has given knowing and informed consent after consultation. The consultation shall include explanation of the implications of the representation and the advantage and risks involved.

Cross References — Partner of justice court judge prohibited from acting as attorney before such judge, see Mississippi Code of 1972, § 73-3-47.

Partner of district attorney or county attorney not to defend in certain cases, see Mississippi Code of 1972, § 73-3-49.

Attorney general and district attorneys and their law partners not to accept employment from corporations of certain kind, see Mississippi Code of 1972, § 73-3-51.

COMMENT

Loyalty to a Client. — Loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See Rule 1.16. Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9. See also Rule 2.2(c). As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

As a general proposition, loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. Paragraph (a) expresses that general rule. Thus, a lawyer ordinarily may not act as advocate against a person the lawyer represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Paragraph (a) applies only when the representation of one client would be directly adverse to the other.

Loyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. Paragraph (b) addresses such situations. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

Consultation and Consent. — In some cases a client may consent to representation notwithstanding a conflict. However, as indicated in paragraph (a)(1) with respect to representation directly adverse to a client, and paragraph (b)(1) with respect to material limitations on representation of a client, when a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Lawyer's Interests. — The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, a lawyer's need for income should not lead the lawyer to undertake matters that cannot be handled competently and at reasonable fee. See Rules 1.1 and 1.5. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. A lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed interest.

Conflicts in Litigation. — Paragraph (a) prohibits representation of opposing parties in litigation, including both parties to a divorce action. See MSB Ethics Opinion No. 80. Simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (b). An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal and the requirements of paragraph (b) are met. Compare Rule 2.2 involving intermediation between clients.

Ordinarily, a lawyer may not act as advocate against a client the lawyer represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which a lawyer may act as advocate against a client. For example, a lawyer representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning statutory interpretation.

A lawyer may represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of Person Paying for a Lawyer's Service. — A lawyer may be paid from a source other than the client, if the client is informed of the fact and consents and the arrangement does not compromise the lawyer's duty of loyalty to the client. See Rule 1.8(f). For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the lawyer's professional independence.

Other Conflict Situations. — Conflicts of interest in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree.

For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them.

Conflict questions may also arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and depending upon the circumstances, a conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The lawyer should make clear the relationship to the parties involved.

A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director.

Conflict Charged by an Opposing Party. — Resolving questions of conflict of interest is primarily the responsibility of the lawyer undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility. In a criminal case, inquiry by the court is generally required when a lawyer represents multiple defendants. Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment. See Scope.

CODE COMPARISON

DR 5-101(A) provides that "Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of the client will be or reasonably may be affected by his own financial, business, property, or personal interests." DR 5-105(A) provides that "A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C)." DR 5-105(C) provides that "In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each." DR 5-107(B) provides that "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such services."

Rule 1.7 goes beyond DR 5-105(A) in requiring that, when the lawyer's other interests are involved, not only must the client consent after consultation but also that, independent of such consent, the representation reasonably appears not to be adversely affected by the lawyer's other interests. This requirement appears to be the intended meaning of the provision in DR 5-105(C) that "it is obvious that he can adequately represent" the client, and is implicit in EC 5-2, which states that "A lawyer should not accept proffered employment if his personal interests or desires will, or there is a reasonable possibility that they will, adversely affect the advice to be given or services to be rendered the prospective client."

See MSB Ethics Opinions Nos. 43, 46, 52, 55, 58, 61, 63, 68, 80, 87, 99 and 103.

JUDICIAL DECISIONS

In general.
Applicability.
Criminal defendants.
Ineffective assistance of counsel.
Informed consent.
Insurance.
Malpractice.
Paralegal's prior work for opposing party's
    prior counsel.

In general.

Although a lawyer may in some circumstances, and with his client's consent, limit objectives of his representation, this can never authorize attorney to engage in dual representation entailing professional decisions on his part which stand to benefit one client at the expense of the other. Hartford Accident & Indem. Co. v. Foster, 528 So. 2d 255 (Miss. 1988).

Applicability.

Pursuant to Miss. R. Prof. Conduct 1.7(a) and 1.10(a), there was no cause to disqualify a law firm that represented defendants, although plaintiff had met with two of the firm's attorneys in his capacity as a national commander of a military order, as the attorneys did not have any relationship with plaintiff in his individual capacity; further, information discussed with the attorneys was not confidential. Cook v. Wallot, 172 So. 3d 788 (Miss. Ct. App. 2013).

Defense counsel's representation of defendant did not violate Miss. R. Prof. Conduct 1.9 as counsel did not have an actual conflict where he formerly prosecuted defendant on a different charge wherein counsel signed the indictment, took defendant's plea, and prepared an order reflecting the plea, and the case was resolved under a new prosecutor as counsel was not so involved in prior matter that the subsequent representation of defendant could be regarded as a changing of sides; Miss. R. Prof. Conduct 1.7 did not apply as counsel did not represent the two clients simultaneously. Gregory v. State, 96 So. 3d 54 (Miss. Ct. App. 2012).

Defense counsel's representation of defendant did not violate Miss. R. Prof. Conduct 1.9 as counsel did not have an actual conflict where he formerly prosecuted defendant on a different charge wherein counsel signed the indictment, took defendant's plea, and prepared an order reflecting the plea, and the case was resolved under a new prosecutor as counsel was not so involved in prior matter that the subsequent representation of defendant could be regarded as a changing of sides; Miss. R. Prof. Conduct 1.7 did not apply as counsel did not represent the two clients simultaneously. Gregory v. State, 96 So. 3d 54 (Miss. Ct. App. 2012).

As to whether a law firm, due to its prior representation of corporation three, was disqualified from representing corporations one and two in their suit concerning an alleged coup by corporation three to gain control of hybrid automobile technology, investments, and contracts that the parties had been working on jointly, Miss. R. Prof. Conduct 1.9 applied, rather than Miss. R. Prof. Conduct 1.7, because the firm had already terminated its representation of corporation three. Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 52322 (N.D. Miss. June 18, 2009).

Criminal defendants.

Consent of criminal defendant is a necessary prerequisite to joint representation, and trial court inquiry into whether defendant has made a knowing and voluntary waiver of his right to conflict-free counsel is imperative. Armstrong v. State, 573 So. 2d 1329 (Miss. 1990).

Ineffective assistance of counsel.

Post-conviction relief petitioner was denied his U.S. Const. amend. VI right to counsel as trial counsel's representation of petitioner at the same time he represented a prosecution witness against petitioner was a per se actual conflict of interest that required an automatic reversal when there was no evidence that petitioner waived the conflict. Kiker v. State, 55 So. 3d 1060 (Miss. 2011).

It appears to be problematic and inappropriate for an attorney who represents a criminal defendant at trial to represent that same defendant on appeal where the attorney intends to raise an ineffective assistance of counsel claim in that appeal. Hill v. State, 749 So. 2d 1143 (Miss. Ct. App. 1999).

Informed consent.

A knowing and informed consent by a criminal defendant after consultation of the advantages and risks involved is a necessary prerequisite to joint representation only if an actual conflict exists. Witt v. State, 781 So. 2d 135 (Miss. Ct. App. 2000).

Insurance.

Mississippi law applied to the issue of whether an insurer was required to provide an insured with independent counsel while defending under a reservation of rights; although the policies at issue were entered into in Louisiana, Mississippi had the most significant relationship to the insurer and the insured where the suits in which the defense was required took place in Mississippi courts, the suits concerned the insured's Mississippi nursing homes, and the relevant policies of Mississippi with regard to the provision of independent counsel were important, as they were rooted in conflict of interest rules such as Miss. R. Prof. Conduct 1.7. Hartford Underwriters Ins. Co. v. Found. Health Servs., 524 F.3d 588 (5th Cir. 2008).

Fact that an insurance contract authorizes insurance company to employ an attorney to handle defense of a case in no way impairs or diminishes duty of lawyer to the insured client. Hartford Accident & Indem. Co. v. Foster, 528 So. 2d 255 (Miss. 1988).

When there is a question as to insurance coverage and insurance company notifies insured that it will fulfill its obligation to defend suit, while reserving a right to deny coverage of insured's conduct, lawyer employed by insurance company is presented with an ethical question, and may in some circumstances be required to withdraw from case. Hartford Accident & Indem. Co. v. Foster, 528 So. 2d 255 (Miss. 1988).

Malpractice.

In a legal malpractice case, the fact that an attorney's father at one time was employed by the opposite party in the underlying suit did not, standing alone, violate the Mississippi Rules of Professional Conduct. Chambers v. Campbell, 968 So. 2d 949 (Miss. Ct. App. 2005), writ of certiorari denied by 904 So. 2d 184, 2005 Miss. LEXIS 401 (Miss. 2005), writ of certiorari denied by 546 U.S. 1034, 126 S. Ct. 759, 163 L. Ed. 2d 575, 2005 U.S. LEXIS 8633, 74 U.S.L.W. 3322 (2005).

Paralegal's prior work for opposing party's prior counsel.

Where a paralegal worked for defendant lenders' prior counsel, and then worked for different plaintiff consumers' counsel, and all the consumer fraud cases involved the same lenders, claims and documents, and nearly identical facts, a substantial relationship existed requiring disqualification of plaintiff consumers' counsel under Miss. R. Prof. Conduct 1.6, 1.9(a), and 1.10(b); the lenders' new counsel had sent a letter to plaintiff consumers' counsel as to the conflict of interest which specifically stated no conflict was waived, and thus, there was no waiver under Miss. R. Prof. Conduct 1.7. Owens v. First Family Fin. Servs., 379 F. Supp. 2d 840 (S.D. Miss. 2005).

RESEARCH REFERENCES

ALR. Attorneys at law: disciplinary proceedings for drafting instrument such as will or trust under which attorney-drafter or member of attorney's family or law firm is beneficiary, grantee, legatee, or devisee. 80 A.L.R.5th 597.

Rule 1.8. Conflict of interest: prohibited transactions.

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interests are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(b) A lawyer shall not use information relating to representation of a client

(1) to the disadvantage of the client, or

(2) to the advantage of himself or a third person, unless the client consents after consultation.

(c) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

(d) Prior to the conclusion or representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media right to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, or administrative proceedings, except that:

(1) A lawyer may advance court costs and expenses of litigation, including but not limited to reasonable medical expenses necessary to the preparation of the litigation of hearing or trail, the repayment of which may be contingent on the outcome of the matter; and

(2) A lawyer representing a client may, in addition to the above, advance the following costs and expenses on behalf of the client, which shall be repaid upon successful conclusion of the matter.

a. Reasonable and necessary medical expenses associated with treatment for the injury giving rise to the litigation or administrative proceeding for which the client seeks legal representation; and

b. Reasonable and necessary living expenses incurred.

The expenses enumerated in paragraph 2 above can only be advanced to a client under dire and necessitous circumstances, and shall be limited to minimal living expenses of minor sums such as those necessary to prevent foreclosure or repossession or for necessary medical treatment. There can be no payment of expenses under paragraph 2 until the expiration of 60 days after the client has signed a contract of employment with counsel. Such payments under paragraph 2 cannot include a promise of future payments, and counsel cannot promise any such payments in any type of communication to the public, and such funds may only be advanced after due diligence and inquiry into the circumstances of the client.

Payments under paragraph 2 shall be limited to $1,500 to any one party by any lawyer or group or succession of lawyers during the continuation of any litigation unless, upon ex parte application, such further payment has been approved by the Standing Committee on Ethics of the Mississippi Bar. An attorney contemplating such payment must exercise due diligence to determine whether such party has received any such payments from another attorney during the continuation of the same litigation, and, if so, the total of such payments, without approval of the Standing Committee on Ethics shall not in the aggregate exceed $1,500. Upon denial of such application, the decision thereon shall be subject to review by the Mississippi Supreme Court on petition of the attorney seeking leave to make further payments. Payments under paragraph 2 aggregating $1,500 or less shall be reported by the lawyer making the payment to the Standing Committee on Ethics within seven (7) days following the making of each such payment. Applications for approval by the Standing Committee on Ethics as required hereunder and notices to the Standing Committee on Ethics of payments aggregating $1,500 or less, shall be confidential.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents after consultation;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

(i) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

(j) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien granted by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case. (Amended, March 25, 1999; October 21, 1999.)

Cross References — Partner of justice court judge prohibited from acting as attorney before such judge, see Mississippi Code of 1972, § 73-3-47.

Partner of district attorney or county attorney not to defend in certain cases, see Mississippi Code of 1972, § 73-3-49.

Attorney general and district attorneys and their law partners not to accept employment from corporations of certain kind, see Mississippi Code of 1972, § 73-3-51.

COMMENT

Transactions Between Client and Lawyer. — As a general principle, all transactions between client and lawyer should be fair and reasonable to the client. In such transactions a review by independent counsel on behalf of the client is often advisable. Furthermore, a lawyer may not exploit information relating to the representation to the client's disadvantage. For example, a lawyer who has learned that the client is investing in specific real estate may not, without the client's consent, seek to acquire nearby property where doing so would adversely affect the client's plan for investment. Paragraph (a) does not, however, apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In such transactions, the lawyer has no advantage in dealing with the client, and the restrictions in paragraph (a) are unnecessary and impracticable.

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide. Paragraph (c) recognizes an exception where the client is a relative of the donee or the gift is not substantial.

Literary Rights. — An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraph (j).

Person Paying for Lawyer's Services. — Rule 1.8(f) requires disclosure of the fact that the lawyer's services are being paid for by a third party. Such an arrangement must also conform to the requirements of Rule 1.6 concerning confidentiality and Rule 1.7 concerning conflict of interest. Where the client is a class, consent may be obtained on behalf of the class by court-supervised procedure.

Family Relationships Between Lawyers. — Rule 1.8(i) applies to related lawyers who are in different firms. Related lawyers in the same firm are governed by Rules 1.7, 1.9, and 1.10. The disqualification stated in Rule 1.8(i) is personal and is not imputed to members of firms with whom the lawyers are associated.

Acquisition of Interest in Litigation. — Paragraph (j) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. This general rule, which has its basis in common law champerty and maintenance, is subject to specific exceptions developed in decisional law and continued in these Rules, such as the exception for reasonable contingent fees set forth in Rule 1.5 and the exception for certain advances of the costs of litigation set forth in paragraph (e).

This Rule is not intended to apply to customary qualification and limitations in legal opinions and memoranda.

CODE COMPARISON

This Rule deals with certain transactions that per se involve conflict of interest.

With regard to Rule 1.8(a), DR 5-104(A) provides that "A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure." EC 5-3 states that "A lawyer should not seek to persuade his client to permit him to invest in an undertaking of his client nor make improper use of his professional relationship to influence his client to invest in an enterprise in which the lawyer is interested."

With regard to Rule 1.8(b), DR 4-101(B)(3) provides that a lawyer shall not "use a confidence or secret of his client for the advantage of himself, or of a third person, unless the client consents after full disclosure."

There is no counterpart to Rule 1.8(c) in the Disciplinary Rules of the Code. EC 5-5 states that "A lawyer should not suggest to his client that a gift be made to himself or for his benefit. If a lawyer accepts a gift from his client, he is peculiarly susceptible to the charge that he unduly influenced or overreached the client. If a client voluntarily offers to make a gift to his lawyer, the lawyer may accept the gift, but before doing so, he should urge that the client secure disinterested advice from an independent, competent person who is cognizant of all the circumstances. Other than in exceptional circumstances, a lawyer should insist that an instrument in which his client desires to name him beneficially be prepared by another lawyer selected by the client."

Rule 1.8(d) is substantially similar to DR 5-104(B), but refers to "literary or media" rights, a more generally inclusive term than "publication" rights.

Rule 1.8(e)(1) is similar to DR 5-103(B), but eliminates the requirement that "the client remain ultimately liable for such expenses."

Rule 1.8(e)(2) has no counterpart in the Code.

Rule 1.8(f) is substantially identical to DR 5-107(A)(1).

Rule 1.8(g) is substantially identical to DR 5-106.

The first clause of Rule 1.8(h) deals with the same subject as DR 6-102(A). There is no counterpart in the Code to the second clause of Rule 1.8(h).

Rule 1.8(i) has no counterpart in the Code.

See MSB Ethics Opinion No. 102.

JUDICIAL DECISIONS

Arbitration agreement.
Financial assistance to client.
Gifts from client.
Living expenses.
Settlements.

Arbitration agreement.

As contracts between a law client and a law firm only required arbitration of fee disputes, such that the client could pursue her other malpractice and tort claims against the firm through the court, the arbitration of the fee dispute was not per se improper under Miss. R. Prof. Conduct 1.8(h). Slater-Moore v. Goeldner, 113 So. 3d 521 (Miss. 2013).

Financial assistance to client.

Attorney was suspended for 90 days for violating the reporting requirement of Miss. R. Prof. Conduct 1.8(e) where he subsequently self-reported that he had made 555 advances to 67 clients over a 3-year period totaling more than $ 160,000, the majority of which were for basic necessities such as utilities, rent, food, travel, medical, and other living expenses. The tribunal specifically found no violation of the stated interest to protect against "buying clients" but it expressed concern over the potential for harm if attorneys were allowed to give the impression that they had a revolving credit plan for prospective clients. Miss. Bar v. Shaw, 919 So. 2d 51 (Miss. 2005).

The Standing Committee on Ethics erred in its conclusion that Rule 1.8(e) absolutely prohibits the advance of medical insurance premiums by attorneys to their needy clients and in failing to consider limited approval that would allow monthly payments subject to reasonable restrictions and re-application as needed. In re G.M., 797 So. 2d 931 (Miss. 2001).

The action of loaning a client money to pay some of her medical and living expenses was not a violation of Rule 1.8(e) where the amount of funds advanced to the client was less than the limit of $1,500 set out in the amended Rule 1.8(e). Attorney AAA v. Mississippi Bar, 735 So. 2d 294 (Miss. 1999).

Attorney's advancement of personal living expenses to his indigent client violated Rules of Professional Conduct, and attorney was subjected to a private reprimand. Mississippi Bar v. Attorney HH, 671 So. 2d 1293 (Miss. 1995).

Gifts from client.

Chancery court properly set aside a deed to the family farm from a mother to a revocable trust that named the sister the sole beneficiary based on the presumption of undue influence because the sister, who acted as the parents' attorney, received her parents' entire estate to the exclusion of her brother; it was not clear the sister complied with the rule, and the nature of her relationship with her parents supported the finding of a confidential relationship. Hodnett v. Hodnett, 269 So. 3d 317 (Miss. Ct. App. 2018), writ of certiorari denied by 258 So. 3d 287, 2018 Miss. LEXIS 527 (Miss. Dec. 13, 2018).

Living expenses.

Chancery court erred in granting summary judgment to a Louisiana attorney in a Mississippi client's legal malpractice action because there was a genuine issue of material fact as to whether the attorney's conduct in advancing over $ 100,000 to the client for "living expenses" violated Miss. R. Prof. Conduct 1.8(e), Miss. Code Ann. §§ 97-9-11 and 73-3-57, and voided the parties' contingency-fee contract. Forbes v. Louis St. Martin, 145 So. 3d 1184 (Miss. Ct. App. Mar. 5, 2013), reversed by 145 So. 3d 1124, 2014 Miss. LEXIS 258 (Miss. May 22, 2014).

State supreme court granted a petition that relaxed the requirements in Miss. R. Prof. Conduct 1.8(e)(2) for period of 90 days such that attorneys could advance living expenses to clients who lived, or had lived, in a county that had been declared a federal disaster area by the President of the United States. In re Rules of Prof'l Conduct, — So. 2d —, 2005 Miss. LEXIS 663 (Miss. Sept. 30, 2005).

Settlements.

Disclosures specified under Miss. R. Prof. Conduct 1.8(g), regarding settlements on behalf of multiple claimants, require disclosures of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement. Waggoner v. Williamson, 8 So. 3d 147 (Miss. 2009).

Attorneys sued by clients regarding a settlement of the clients' personal injury claims were not entitled to partial summary judgment because the clients said that, despite agreeing, in the settlement with the party sued on the clients' behalf, to abide by Miss. R. Prof. Conduct 1.8, the attorneys did not reveal to the clients, inter alia, the existence and amount of an aggregate settlement which included the clients' claim. Waggoner v. Williamson, 8 So. 3d 147 (Miss. 2009).

RESEARCH REFERENCES

ALR. Attorneys at law: disciplinary proceedings for drafting instrument such as will or trust under which attorney-drafter or member of attorney's family or law firm is beneficiary, grantee, legatee, or devisee. 80 A.L.R.5th 597.

Rule 1.9. Conflict of interest: former client.

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 would permit with respect to a client or when the information has become generally known.

COMMENT

After termination of a client-lawyer relationship, a lawyer may not represent another client except in conformity with this Rule. The principles in Rule 1.7 determine whether the interests of the present and former client are adverse. Thus, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in subsequent civil action against the government concerning the same transaction.

The scope of a "matter" for purposes of Rule 1.9(a) may depend on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a wholly distinct problem of that type even though the subsequent representation involves a position adverse to the prior client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdiction. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

Information acquired by the lawyer in the course of representing a client may not subsequently be used by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

Disqualification from subsequent representation is for the protection of clients and can be waived only by them. A waiver is effective only if there is disclosure of the circumstances, including the lawyer's intended role in behalf of a new client.

With regard to an opposing party's raising a question of conflict of interest, see Comment to Rule 1.7. With regard to disqualification of a firm with which a lawyer is associated, see Rule 1.10.

CODE COMPARISON

There is no counterpart to Rule 1.9(a) or (b) in the Disciplinary Rules of the Code. The problem addressed in Rule 1.9(a) sometimes has been dealt with under the rubric of Canon 9 of the Code, which provides that "A lawyer should avoid even the appearance of impropriety." EC 4-6 states that "the obligation of a lawyer to preserve the confidences and secrets of his client continues after the termination of his employment."

The exception in the last sentence of Rule 1.9(b) permits a lawyer to use information relating to a former client that is in the "public domain," a use that is also not prohibited by the Code. Since the scope of Rule 1.6(a) is much broader than "confidences and secrets," it is necessary to define when a lawyer may make use of information after the client-lawyer relationship has terminated.

The provision for waiver by the former client is in effect similar to DR 5-105(C).

See MSB Ethics Opinion No. 106.

JUDICIAL DECISIONS

Applicability.
Divorce.
Paralegal's prior work for opposing party's
prior counsel.
Violation of Rule 1.9 not found.

Applicability.

Counsel was not ineffective based on a failure to withdraw due to a conflict of interest because the rule of professional conduct regarding conflicts of interest due to the attorney's representation of a former client, who was a witness at defendant's trial, was inapplicable as defendant's attorney did not obtain any privileged information from the former client; the former client's grand-larceny charge was entirely unrelated to defendant's murder charge; and defendant was aware of the brief former representation and agreed to waive any conflict. Thomas v. State, 134 So. 3d 357 (Miss. Ct. App. 2013).

As to whether a law firm, due to its prior representation of corporation three, was disqualified from representing corporations one and two in their suit concerning an alleged coup by corporation three to gain control of hybrid automobile technology, investments, and contracts that the parties had been working on jointly, Miss. R. Prof. Conduct 1.9 applied, rather than Miss. R. Prof. Conduct 1.7, because the firm had already terminated its representation of corporation three. Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., — F. Supp. 2d —, 2009 U.S.

Dist. LEXIS 52322 (N.D. Miss. June 18, 2009).

Divorce.

The wife's attorney in a divorce proceeding was not subject to disqualification based on a conflict of interest since his prior representation of the parties in probate matters and in litigation against a former business partner was not substantially related to the divorce proceeding. Shorter v. Shorter, 740 So. 2d 352 (Miss. Ct. App. 1999).

Paralegal's prior work for opposing party's prior counsel.

Where a paralegal worked for defendant lenders' prior counsel, and then worked for different plaintiff consumers' counsel, and all the consumer fraud cases involved the same lenders, claims and documents, and nearly identical facts, a substantial relationship existed requiring disqualification of plaintiff consumers' counsel under Miss. R. Prof. Conduct 1.6, 1.9(a), and 1.10(b). Owens v. First Family Fin. Servs., 379 F. Supp. 2d 840 (S.D. Miss. 2005).

Violation of Rule 1.9 not found.

Defendant was not entitled to a new trial based on the assistant district attorney's prior representation of defendant's witness because he failed to identify the witness until the day of trial and when he was called to testify the assistant district attorney acted properly by not participating in his cross-examination. Harvell v. State, — So. 3d —, 2019 Miss. App. LEXIS 192 (Miss. Ct. App. May 7, 2019).

Defense counsel's representation of defendant did not violate Miss. R. Prof. Conduct 1.9 as counsel did not have an actual conflict where he formerly prosecuted defendant on a different charge wherein counsel signed the indictment, took defendant's plea, and prepared an order reflecting the plea, and the case was resolved under a new prosecutor as counsel was not so involved in prior matter that the subsequent representation of defendant could be regarded as a changing of sides; Miss. R. Prof. Conduct 1.7 did not apply as counsel did not represent the two clients simultaneously. Gregory v. State, 96 So. 3d 54 (Miss. Ct. App. 2012).

Defense counsel's representation of defendant did not violate Miss. R. Prof. Conduct 1.9 as counsel did not have an actual conflict where he formerly prosecuted defendant on a different charge wherein counsel signed the indictment, took defendant's plea, and prepared an order reflecting the plea, and the case was resolved under a new prosecutor as counsel was not so involved in prior matter that the subsequent representation of defendant could be regarded as a changing of sides; Miss. R. Prof. Conduct 1.7 did not apply as counsel did not represent the two clients simultaneously. Gregory v. State, 96 So. 3d 54 (Miss. Ct. App. 2012).

Law firm's representation of corporations one and two in their suit concerning an alleged coup by corporation three and several individuals to gain control of hybrid automobile technology, investments, and contracts that the parties had been working on jointly did not violate Miss. R. Prof. Conduct 1.9 with regard to the firm's prior representation of one of the individuals on a personal tax matter because there was no evidence that the firm's representation of the individual concerned any of the issues in the instant case. Hybrid Kinetic Auto. Holdings, Inc. v. Hybrid Kinetic Auto. Corp., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 52322 (N.D. Miss. June 18, 2009).

Law firm's representation of corporations one and two in their suit concerning an alleged coup by corporation three to gain control of hybrid automobile technology, investments, and contracts that the parties had been working on jointly violated Miss. R. Prof. Conduct 1.9 because (1) there was a former attorney-client relationship between the firm and corporation three, evidenced by a retainer agreement; (2) there was a substantial relationship between the firm's prior representation of corporation three and its current representation of plaintiffs, as there was evidence that the firm was also working on issues related to corporation three's ownership and corporate structure, which issues were central in the instant litigation; and (3) the firm had information regarding corporate structure that it believed was contrary to corporation three's position. Hybrid Kinetic Auto.

Holdings, Inc. v. Hybrid Kinetic Auto. Corp., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 52322 (N.D. Miss. June 18, 2009).

RESEARCH REFERENCES

Law Reviews — Law Firm Disqualification and Nonlawyer Employees: A Proposal for a Consistent Analysis, 26 Miss. C. L. Rev. 163, 2006/2007.

Rule 1.10. Imputed disqualification: general rule.

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.4.

(b) When a lawyer becomes associated with a firm, the firm may not knowingly represent a person in the same or a substantially related matter in which that lawyer, or a firm with which the lawyer was associated, had previously represented a client whose interests are materially adverse to that person and about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(c) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(b) that is material to the matter.

(d) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7. (Amended effective November 3, 2005 to add reference to Rule 2.4.)

Cross References — Partner of justice court judge prohibited from acting as attorney before such judge, see Mississippi Code of 1972, § 73-3-47.

Partner of district attorney or county attorney not to defend in certain cases, see Mississippi Code of 1972, § 73-3-49.

Attorney general and district attorneys and their law partners not to accept employment from corporations of certain kind, see Mississippi Code of 1972, § 73-3-51.

COMMENT

Definition of "Firm". — For purposes of the Rules of Professional Conduct, the term "firm" includes lawyers in a private firm, and lawyers employed in the legal department of a corporation or other organization. Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to confidential information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

With respect to the law department of an organization, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. However, there can be uncertainty as to the identity of the client. For example, it may not be clear whether a law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

Similar questions can also arise with respect to lawyers in legal aid. Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units. As in the case of independent practitioners, whether the lawyers should be treated as associated with each other can depend on the particular rule that is involved, and on the specific facts of the situation.

Where a lawyer has joined a private firm after having represented the government, the situation is governed by Rule 1.11(a) and (b); where a lawyer represents the government after having served private clients, the situation is governed by Rule 1.11(c)(1). The individual lawyer involved is bound by the Rules generally, including Rules 1.6, 1.7, and 1.9.

Different provisions are thus made for movement of a lawyer from one private firm to another and for movement of a lawyer between a private firm and the government. The government is entitled to protection of its client confidences, and therefore to the protections provided in Rules 1.6, 1.9, and 1.11. However, if the more extensive disqualification in Rule 1.10 were applied to former government lawyers, the potential effect on the government would be unduly burdensome. The government deals with all private citizens and organizations, and thus has a much wider circle of adverse legal interests than does any private law firm. In these circumstances, the government's recruitment of lawyers would be seriously impaired if Rule 1.10 were applied to the government. On balance, therefore, the government is better served in the long run by the protections stated in Rule 1.11.

Principles of Imputed Disqualifications. — The rule of imputed disqualification stated in paragraph (a) gives effect to the principles of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owned by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by paragraphs (b) and (c).

Lawyers Moving Between Firms. — When lawyers have been associated in a firm but then end their association, however, the problem is more complicated. The fiction that the law firm is the same as a single lawyer is no longer wholly realistic. There are several competing considerations. First, the client previously represented must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the rule of disqualification should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the rule of disqualification should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many to some degree limit their practice to one field or another, and that many move from one association to another several times in their careers. If the concept of imputed disqualification were defined with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and the opportunity of clients to change counsel.

Reconciliation of these competing principles in the past has been attempted under two rubrics. One approach has been to seek per se rules of disqualification. For example, it has been held that a partner in a law firm is conclusively presumed to have access to all confidences concerning all clients of the firm. Under this analysis, if a lawyer has been a partner in one law firm and then becomes a partner in another law firm, there is a presumption that all confidences known by a partner in the first firm are known to all partners in the second firm. This presumption might properly be applied in some circumstances, especially where the client has been extensively represented, but may be unrealistic where the client was represented only for limited purposes. Furthermore, such a rigid rule exaggerates the difference between a partner and an associate in modern law firms.

The other rubric formerly used for dealing with vicarious disqualification is the appearance of impropriety proscribed in Canon 9 of the Code of Professional Responsibility. This rubric has a two-fold problem. First, the appearance of impropriety can be taken to include any new client-lawyer relationship that might make a former client feel anxious. If that meaning were adopted, disqualification would become little more than a question of subjective judgment by the former client. Second, since "impropriety" is undefined, the term "appearance of impropriety" is question-begging. It therefore has to be recognized that the problem of imputed disqualification cannot be properly resolved either by simple analogy to a lawyer practicing alone or by the very general concept of appearance of impropriety.

A rule based on a functional analysis is more appropriate for determining the question of vicarious disqualification. Two functions are involved: preserving confidentiality and avoiding positions adverse to a client.

Confidentiality. — Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in particular circumstances, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients.

Application of paragraphs (b) and (c) depends on a situation's particular facts. In any such inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

Paragraphs (b) and (c) operate to disqualify the firm only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(b). Thus, if a lawyer while with one firm acquired no knowledge of information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9.

Adverse Positions. — The second aspect of loyalty to a client is the lawyer's obligation to decline subsequent representations involving positions adverse to a former client arising in substantially related matters. This obligation requires abstention from adverse representation by the individual lawyer involved, but does not properly entail abstention of other lawyers through imputed disqualification. Hence, this aspect of the problem is governed by Rule 1.9(a). Thus, if a lawyer left one firm for another, the new affiliation would not preclude the firms involved from continuing to represent clients with adverse interests in the same or related matters, so long as the conditions of Rule 1.10(b) and (c) concerning confidentiality have been met.

CODE COMPARISON

DR 5-105(D) provides that "If a lawyer is required to decline or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or affiliate with him or his firm, may accept or continue such employment."

See MSB Ethics Opinion Nos. 54, 58 and 87.

JUDICIAL DECISIONS

Conflict.
District attorneys.
Paralegal's prior work for opposing party's prior counsel.

Conflict.

Pursuant to Miss. R. Prof. Conduct 1.7(a) and 1.10(a), there was no cause to disqualify a law firm that represented defendants, although plaintiff had met with two of the firm's attorneys in his capacity as a national commander of a military order, as the attorneys did not have any relationship with plaintiff in his individual capacity; further, information discussed with the attorneys was not confidential. Cook v. Wallot, 172 So. 3d 788 (Miss. Ct. App. 2013).

District attorneys.

Trial court should have disqualified district attorney's office from burglary prosecution, where one of two district attorneys had previously represented defendant as public defender, and State failed to show that this district attorney had absolutely no participation in prosecution and divulged no confidential information. Aldridge v. State, 583 So. 2d 203 (Miss. 1991).

Paralegal's prior work for opposing party's prior counsel.

Where a paralegal worked for defendant lenders' prior counsel, and then worked for different plaintiff consumers' counsel, and all the consumer fraud cases involved the same lenders, claims and documents, and nearly identical facts, a substantial relationship existed requiring disqualification of plaintiff consumers' counsel under Miss. R. Prof. Conduct 1.6, 1.9(a), and 1.10(b). Owens v. First Family Fin. Servs., 379 F. Supp. 2d 840 (S.D. Miss. 2005).

RESEARCH REFERENCES

Law Reviews — Law Firm Disqualification and Nonlawyer Employees: A Proposal for a Consistent Analysis, 26 Miss. C. L. Rev. 163, 2006/2007.

Rule 1.11. Successive government and private employment.

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(b) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

(c) Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

(d) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

(e) As used in this Rule, the term "confidential government information" means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

Cross References — Partner of justice court judge prohibited from acting as attorney before such judge, see Mississippi Code of 1972, § 73-3-47.

Partner of district attorney or county attorney not to defend in certain cases, see Mississippi Code of 1972, § 73-3-49.

Attorney general and district attorneys and their law partners not to accept employment from corporations of certain kind, see Mississippi Code of 1972, § 73-3-51.

COMMENT

This Rule prevents a lawyer from exploiting public office for the advantage of a private client. It is a counterpart of Rule 1.10(b), which applies to lawyers moving from one firm to another.

A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in Rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is subject to Rule 1.11 and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule.

Where the successive clients are a public agency and a private client, the risk exists that power or discretion vested in public authority might be used for the special benefit of a private client. A lawyer should not be in a position where benefit to a private client might affect performance of the lawyer's professional functions on behalf of public authority. Also, unfair advantage could accrue to the private client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. However, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. The provisions for screening and waiver are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service.

When the client is an agency of one government, that agency should be treated as a private client for purposes of this Rule if the lawyer thereafter represents an agency of another government, as when a lawyer represents a city and subsequently is employed by a federal agency.

Paragraphs (a)(1) and (b) do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement. They prohibit directly relating the attorney's compensation to the fee in the matter in which the lawyer is disqualified.

Paragraph (a)(2) does not require that a lawyer give notice to the government agency at a time when premature disclosure would injure the client; a requirement for premature disclosure might preclude engagement of the lawyer. Such notice is, however, required to be given as soon as practicable in order that the government agency will have a reasonable opportunity to ascertain that the lawyer is complying with Rule 1.11 and to take appropriate action if it believes the lawyer is not complying.

Paragraph (b) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

Paragraphs (a) and (c) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

Paragraph (c) does not disqualify other lawyers in the agency with which the lawyer in question has become associated.

CODE COMPARISON

Rule 1.11(a) is similar to DR 9-101(B), except that the latter uses the terms "in which he had substantial responsibility while he was a public employee."

Rules 1.11(b), (c), (d) and (e) have no counterparts in the Code.

See MSB Ethics Opinion No. 45.

JUDICIAL DECISIONS

Disqualification not necessary.
Sanctions.

Disqualification not necessary.

In a murder trial, no disqualification of a prosecutor was necessary due to a conflict of interest under Miss. R. Prof. Conduct 1.11(a), (b) based on the fact that defendant's former attorney worked in the prosecutor's office; the former attorney gave the required notice to the public defender's office under Aldridge v. State, 583 So. 2d 203 (Miss. 1991) and the former attorney was required to notify the other party, which did not mean that she had to notify defendant directly. Ousley v. State, 984 So. 2d 996 (Miss. Ct. App. 2007), affirmed by 984 So. 2d 985, 2008 Miss. LEXIS 338 (Miss. 2008).

Sanctions.

Imposition of a public reprimand against the attorney in her disciplinary proceeding was appropriate pursuant to Miss. R. Prof. Conduct 1.11 and Miss. R. Prof. Conduct 1.12(a) because the judge represented a party in a case related to one over which she formerly presided as a judge, which was in violation of the Rules of Professional Conduct; the only way she could have represented anyone in connection with the former case was if all parties had given informed consent, which did not occur. James v. Miss. Bar, 962 So. 2d 528 (Miss. 2007), writ of certiorari denied by 555 U.S. 826, 129 S. Ct. 160, 172 L. Ed. 2d 42, 2008 U.S. LEXIS 6447, 77 U.S.L.W. 3197 (2008).

Rule 1.12. Former judge or arbitrator.

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, or law clerk to such person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as an attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or as a law clerk to such a person or as an arbitrator, mediator, or other third-party neutral.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate tribunal to enable it to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party. (Amended effective November 3, 2005 to include third party neutrals generally.)

COMMENT

This Rule generally parallels Rule 1.11. The term "personally and substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges.

Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Terminology.

Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. Rule 2.4.

Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

Requirements for screening procedures are stated in Terminology. Paragraph (c)(1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[Amended effective November 3, 2005.]

CODE COMPARISON

Paragraph (a) is substantially similar to DR 9-101(A), which provides that "A lawyer shall not accept employment in a matter upon the merits of which he has acted in a judicial capacity." Paragraph (a) differs, however, in that it is broader in scope and states more specifically the persons to whom it applies. There is no counterpart in the Code to paragraphs (b), (c) or (d).

With regard to arbitrators, EC 5-20 states that "a lawyer who has undertaken to act as an impartial arbitrator or mediator, ... should not thereafter represent in the dispute any of the parties involved." DR 9-101(A) does not provide a waiver of the disqualification applied to former judges by consent of the parties. However, DR 5-105(C) is similar in effect and could be construed to permit waiver.

JUDICIAL DECISIONS

Disqualification of an attorney.
Sanctions.
— Reprimand.

Disqualification of an attorney.

Appellate court affirmed the disqualification of the mother's new counsel pursuant to Miss. R. Prof. Conduct 1.12 in her motion to modify custody as the mother's attorney's role as chancellor in the parties' prior custody issues constituted substantial participation in the litigation. J.N.W.E. v. W.D.W., 922 So. 2d 12 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 129 (Miss. 2006).

Appellate court upheld a trial court's decision to deny the mother's motion to disqualify the father's attorney, because even though the appellate court may have reached a different decision, it was obligated to give deference to the trial court's findings that the father's attorney had not acted as judge in a prior custody issue between the parties. J.N.W.E. v. W.D.W., 922 So. 2d 12 (Miss. Ct. App. 2005), writ of certiorari denied by 926 So. 2d 922, 2006 Miss. LEXIS 129 (Miss. 2006).

Sanctions.

Imposition of a public reprimand against the attorney in her disciplinary proceeding was appropriate pursuant to Miss. R. Prof. Conduct 1.11 and Miss. R. Prof. Conduct 1.12(a) because the judge represented a party in a case related to one over which she formerly presided as a judge, which was in violation of the Rules of Professional Conduct; the only way she could have represented anyone in connection with the former case was if all parties had given informed consent, which did not occur. James v. Miss. Bar, 962 So. 2d 528 (Miss. 2007), writ of certiorari denied by 555 U.S. 826, 129 S. Ct. 160, 172 L. Ed. 2d 42, 2008 U.S. LEXIS 6447, 77 U.S.L.W. 3197 (2008).

— Reprimand.

Judge who served part-time—pro tem as a municipal court judge, and also engaged in private criminal defense practice, received sanction of public reprimand for assuming role of attorney, and presumably accepting a fee, for representing a defendant and attempting to reduce the same bond which he, as city judge, had earlier set for that defendant. Mississippi Comm'n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994).

Rule 1.13. Organization as client.

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:

(1) asking reconsideration of the matter;

(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and

(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act in behalf of the organization as determined by applicable law.

(c) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.

(d) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when it is apparent that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(e) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, object on the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

COMMENT

The Entity as the Client. — An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents.

Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. However, different considerations arise when the lawyer knows that the organization may be substantially injured by action of a constituent that is in violation of law. In such a circumstance, it may be reasonably necessary for the lawyer to ask the constituent to reconsider the matter. If that fails, or if the matter is of sufficient seriousness and importance to the organization, it may be reasonably necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. Clear justification should exist for seeking review over the head of the constituent normally responsible for it. The stated policy of the organization may define circumstances and prescribe channels for such review, and a lawyer should encourage the formulation of such a policy. Even in the absence of organization policy, however, the lawyer may have an obligation to refer a matter to higher authority, depending on the seriousness of the matter and whether the constituent in question has apparent motives to act at variance with the organization's interest. Review by the chief executive officer or by the board of directors may be required when the matter is of importance commensurate with their authority. At some point it may be useful or essential to obtain an independent legal opinion.

In an extreme case, it may be reasonably necessary for the lawyer to refer the matter to the organization's highest authority. Ordinarily, that is the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions highest authority reposes elsewhere; for example, in the independent directors of a corporation.

Relation to Other Rules. — The authority and responsibility provided in paragraph (b) are concurrent with the authority and responsibility provided in other rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.6, 1.8 and 1.16, 3.3 or 4.1. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rule 1.2(d) can be applicable.

Government Agency. — The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority. See note on Scope.

Clarifying the Lawyer's Role. — There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization, of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

Dual Representation. — Paragraph (e) recognizes that a lawyer for an organization may also represent a principal officer or shareholder.

Derivative Actions. — Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

CODE COMPARISON

There is no counterpart to this Rule in the Disciplinary Rules of the Code. EC 5-18 states that "A lawyer employed or retained by a corporation or similar entity owes his allegiance to the entity and not to a stockholder, director, officer, employee, representative, or other person connected with the entity. In advising the entity, a lawyer should keep paramount its interests and his professional judgment should not be influenced by the personal desires of any person or organization. Occasionally, a lawyer for an entity is requested by a stockholder, director, officer, employee, representative, or other person connected with the entity to represent him in an individual capacity; in such a case the lawyer may serve the individual only if the lawyer is convinced that differing interests are not present." EC 5-24 states "Although a lawyer may be employed by a business corporation with non-lawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman." DR 5-107(B) provides that "a lawyer shall not permit a person who ... employs ... him to render legal services for another to direct or regulate his professional judgment in rendering such legal services."

Rule 1.14. Client under a disability.

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

(c) Information relating to the representation of a client who may be impaired is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent necessary to protect the client's interest. (Amended effective November 3, 2005 to add subsection (c).)

COMMENT

The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a mental disorder or disability, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, an incapacitated person may have no power to make legally binding decisions. Nevertheless, a client lacking legal competence often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. Furthermore, to an increasing extent the law recognizes intermediate degrees of competence. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. Thus, if a disabled client has substantial property that should be sold for the client's benefit, effective completion of the transaction ordinarily requires appointment of a legal representative. In many circumstances, however, appointment of a legal representative may be expensive or traumatic for the client. Evaluation of these considerations is a matter of professional judgment on the lawyer's part.

If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Disclosure of the Client's Condition. — Rules of procedure in litigation generally provide that minors or persons suffering a mental disability shall be represented by a guardian or next friend if they do not have a general guardian. However, disclosure of the client's disability could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one. The lawyer may seek guidance from an appropriate diagnostician.

[Amended effective November 3, 2005.]

CODE COMPARISON

There is no counterpart to this Rule in the Disciplinary Rules of the Code. EC 7-12 states that "Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent."

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such trust account funds and other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When a lawyer is in possession of property in which both the lawyer and another person claim an interest, the property shall be kept separate by the lawyer until completion of an accounting and severance of their respective interests. If a dispute arises concerning their respective interests, the lawyer shall disburse the portion not in dispute, and keep separate the portion in dispute until the dispute is resolved.

(d) Except as provided in paragraph (f) of this rule, a lawyer or law firm shall create and maintain an interest- or dividend-bearing trust account (IOLTA Account) for all funds which are nominal or short term funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income (IOLTA eligible Funds), pursuant to the following:

(1) All trust Funds shall be deposited in a lawyer's or law firm's IOLTA Account unless- in the lawyer's judgment - the funds can earn income for the client or third party in excess of the costs incurred to secure such income.

(2) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.

(3) IOLTA Accounts shall be established only with financial institutions:

(i) authorized by federal or state law to do business in Mississippi;

(ii) the deposits of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any successors thereof;

(iii) which pay a rate of interest or dividend on IOLTA Accounts that is no less than the highest rate generally available to its own non-IOLTA Account depositors when the IOLTA Account meets the same minimum balance or other eligibility requirements, provided however that: (a) IOLTA Accounts may be maintained in an interest-bearing checking account or an interest or dividend-bearing account with check-writing and with a sweep feature which is tied to either a money market account insured by an agency of the federal government or a money market fund or daily overnight repurchase agreement invested solely in or fully collateralized by U.S. Government securities (defined as U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof) so long as there is no impairment of the right to immediately withdraw and transfer principal as soon as permitted by law; (b) institutions may choose to pay these rates on a qualifying IOLTA checking account instead of establishing the higher rate product; and (c) institutions may also elect to pay a higher interest or dividend rate and may waive any fees on IOLTA Accounts.

(4) Financial institutions are prohibited from using interest from one IOLTA Account to pay fees or charges in excess of the interest earned on another IOLTA Account. If not waived by the financial institution, such fees, if any, are the responsibility of the lawyer or the law firm.

(5) Lawyers or law firms depositing funds in an IOLTA Account established pursuant to this rule shall direct the depository institution:

(i) to remit all interest, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, to the Mississippi Bar Foundation, Inc. For the purposes of this paragraph, reasonable services charges or fees shall not include fees for wire transfers, insufficient funds, bad checks, stop payments, account reconciliation, negative collected balances and check printing;

(ii) to transmit with each remittance to the Foundation a report showing the following information for each IOLTA Account: the name of the lawyer or law firm, the amount of interest or dividends earned, the rate and type of interest or dividend applied, the amount of any services charges or fees assessed during the remittance period, the net amount of interest or dividends remitted for the period, the average account balance for the period for which the interest was earned and such other information as is reasonably required by the Foundation;

(iii) to transmit to the depositing lawyer or law firm a periodic account statement in accordance with normal procedures for reporting to depositors.

(e) Any IOLTA Account which has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of time may, at the discretion of the Foundation, be exempted from and removed from the IOLTA program. Exemption of an IOLTA Account from the IOLTA program revokes the permission to use the Foundation's tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the nominal or short term funds of clients and third persons separately, as required above, in a non-interest bearing account.

(f) Every lawyer admitted to practice in this State shall annually certify to this Court that all IOLTA eligible Funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer:

(1) is not engaged in the private practice of law;

(2) does not have an office within the State of Mississippi;

(3) is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;

(4) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(5) has been exempted pursuant to Section (e) above; or

(6) has been exempted by an order of general or special application of this Court which is cited in the certification.

(g) In the exercise of a lawyer's good faith judgment in determining whether funds can earn income in excess of costs, a lawyer may take into consideration all reasonable factors including, without limitation:

(1) the amount of the funds to be deposited;

(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) the rates of interest or yield at the financial institutions where the funds are to be deposited;

(4) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;

(5) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients; and

(6) any other circumstances that affect the ability of the funds to earn a net return for the client.

(h) A lawyer shall review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client.

(i) The determination of whether funds are nominal or short-term so that they can not earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

(j) A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph (1) below, a lawyer may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, 'collected funds' means funds deposited, finally settled, and credited to the lawyer's trust account.

(1) Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Provided the lawyer has other sources of funds available at the time of disbursement (other than client or third party funds) sufficient to replace any uncollected funds, not withstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances:

(i) when the deposit is made by certified check or cashier's check;

(ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;

(iii) when the deposit is made by a check issued by the United States, the State of Mississippi, or any agency or political subdivision of the State of Mississippi; or

(iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the State of Mississippi.

In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered guilty of professional misconduct based upon the disbursement of uncollected funds.

(2) A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct. (Amended effective August 1, 1993; amended effective November 3, 2005 to add new sub-section (h); amended effective January 1, 2007, to provide for mandatory IOLTA participation.)

COMMENT

A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is a risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

Interest on Lawyer's Trust Accounts. — Each lawyer or law firm, unless specifically excluded in paragraph (f), is required to establish an IOLTA Account. Only IOLTA eligible funds - those nominal or short term funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income - may be placed in the IOLTA Account. This definition of IOLTA eligible funds is in compliance with the decision in *Brown v. Legal Foundation of Washington,* 538 U.S. 216 (2003), which upheld the constitutionality of the IOLTA concept.

No earnings on the IOLTA Accounts may be made available to or utilized by the lawyer or law firm. Upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney client relationships do not compel lawyers either to invest clients' funds or to advise clients to make their funds productive.

IOLTA eligible funds shall be retained in an interest - or dividend - bearing trust account with the interest (net of any reasonable service charge or fees) made payable to the Mississippi Bar Foundation, Inc., said payments to be made by the financial institution at least quarterly. The determination of whether client or third party funds are nominal in amount or to be held for a short period of time so that they cannot earn net income over costs rests in the sound judgment of each lawyer or law firm and no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of judgment in that regard.

Annual certification required in (f) above shall be through a form that is made a part of the members's annual membership fees statement.

The decision to deposit client or third party funds in an IOLTA Account rests with the lawyers, so notification of such a deposit to clients whose funds are nominal in amount or to be held for a short period of time is unnecessary. This is not to suggest that many lawyers will not want to notify their clients of their participation in the program in some fashion. There is no impropriety in a lawyer or law firm advising all clients of how their participation advances the administration of justice in Mississippi.

Unclaimed Property. — Any lawyer holding property or monies belonging to clients with whom he has lost contact must retain and account for said funds, subject to the Mississippi Uniform Disposition of Unclaimed Property Act.

CODE COMPARISON

With regard to Rule 1.15(a), DR 9-102(A) provides that "funds of clients" are to be kept in a trust account in the state in which the lawyer's office is situated. DR 9-102(B)(2) provides that a lawyer shall "identify and label securities and properties of a client ... and place them in ... safekeeping ...." DR 9-102(B)(3) requires that a lawyer "maintain complete records of all funds, securities and other properties of a client ...." Rule 1.15(a) extends these requirements to property of a third person that is in the lawyer's possession in connection with the representation.

Rule 1.15(b) is substantially similar to DR 9-102(B)(1) and (4).

Rule 1.15(c) is substantially similar to DR 9-102(A)(2), except that the requirement regarding disputes applies to property concerning which an interest is claimed by a third person as well as by a client.

See MSB Ethics Opinions Nos. 98 and 104.

JUDICIAL DECISIONS

Sufficiency of evidence.
Suspension.

Sufficiency of evidence.

Attorney violated Miss. R. Prof. Conduct 1.15 because: (1) she admitted to losing client files that she had placed in a storage unit; and (2) although she said that she returned important documents to clients "most times," she could not say that she had done so every time. Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008).

Bankruptcy court found that as an escrow agent for a real estate transaction, debtor's duty fell within the concept of fiduciary under 11 U.S.C.S. § 523(a)(4) because an express or technical trust was created when the creditor wired money into the debtor's trust account, but even if the debtor were not acting as an escrow agent, as a licensed attorney in the State of Mississippi, he had a fiduciary obligation regarding the money in his trust account pursuant to the Miss. R. Prof. Conduct 1.15. This was true even if that money belonged to a third person as opposed to a client. Gardner v. Deer (In re Deer), — Bankr. —, 2008 Bankr. LEXIS 777 (Bankr. S.D. Miss. Mar. 14, 2008).

Suspension.

Six-month suspension was an appropriate sanction to punish an attorney for his misconduct because his acts of depositing a retainer check into his operating account, rather than his trust account and commingling his own funds with client funds in his trust account appeared to be largely the result of negligence and inattentiveness and did not rise to the level of ill intent; the attorney had no prior disciplinary history, and he did not lie to his clients or to disciplinary authorities. Miss. Bar v. Ogletree, 226 So. 3d 79 (Miss. 2015).

Rule 1.16. Declining or terminating representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without materially adverse effect on the interests of the client, or if:

(1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or fraud;

(3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

(c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion.

Mandatory Withdrawal. — A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may wish an explanation of the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

Discharge. — A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring the client to represent himself.

If the client is mentally incompetent, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and, in an extreme case, may initiate proceedings for a conservatorship or similar protection of the client. See Rule 1.14.

Optional Withdrawal. — A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer also may withdraw where the client insists on a repugnant or imprudent objective.

A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client Upon Withdrawal. — Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law.

Whether or not a lawyer for an organization may under certain unusual circumstances have a legal obligation to the organization after withdrawing or being discharged by the organization's highest authority is beyond the scope of these Rules.

See MSB Ethics Opinions Nos. 49 and 105.

JUDICIAL DECISIONS

In general.
Permission to withdraw.
Illustrative cases.

In general.

Any time an attorney undertakes to represent a client in any court of record in Mississippi, there attaches a legal, ethical, professional and moral obligation to continue with that representation until such time as he is properly relieved by the court of record; this is true regardless of circumstances under which his representation of that client may be terminated, and this withdrawal may be accomplished only by filing of motion with court, with proper notice to client. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Permission to withdraw.

Trial court properly held an attorney in direct criminal contempt because he refused to represent his client at his trial scheduled that day, despite not being granted permission to withdraw; even if the attorney believed he had good cause to terminate his representation, he still had to obtain the trial court's permission in order to withdraw, and once denied permission, he could not simply ignore the order because he believed the judge was wrong. Harris v. State, 224 So. 3d 76 (Miss. 2017).

Trial court properly held an attorney in direct criminal contempt because the attorney defied the trial court's authority when the attorney refused to represent his client at his trial scheduled that day, despite not being granted permission to withdraw; the Rules of Professional Conduct did not authorize the attorney to withdraw despite being ordered not to, but they actually required him to continue the representation. Harris v. State, 224 So. 3d 76 (Miss. 2017).

An attorney is not free to disregard requirement of court permission for withdrawal, established by Mississippi case law, simply because there is no published court rule mandating same requirement. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Appropriate discipline for attorney charged with neglect, with prior disciplinary record for substantially similar neglect of a client's case, was sixty days suspension from practice of law. Mississippi Bar v. Hall, 612 So. 2d 1075 (Miss. 1992).

Illustrative cases.

Attorney had violated Miss. R. Prof. Conduct 1.16 where his failure to file the appeal brief amounted to an attempted withdrawal, and given the unsuccessful attempt to reinstate the appeal, the client was harmed by the attorney's failure. Crosby v. Miss. Bar, 268 So. 3d 520 (Miss. 2018).

Attorney violated a professional conduct rule by accepting a $ 20,000 fee to provide representation through trial, undertaking representation, abandoning the client without reasonable notice, and failing to return any unearned portion of the flat fee. A public reprimand was the proper sanction because cases involving failure to return unearned fees generally involved more egregious circumstances. Miss. Bar v. Pegram, 167 So. 3d 230 (Miss. 2014).

Trial court did not abuse its discretion in denying clients' motion to compel their former attorneys to give their case file to the clients and in rejecting the clients' contention that the case file was their property; the trial court properly ordered that counsel make the case file available to the clients and allow the clients to copy as much of the case file as they chose at the client's expense because the trial court's order comported with Miss. R. Prof. Conduct 1.16(d) in that it required the attorneys to do what was reasonably practicable in order to protect the clients' interests. Edmonds v. Williamson, 13 So. 3d 1283 (Miss. 2009).

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Rule 1.17. Sale of law practice.

A lawyer or law firm may sell or purchase a law practice including good will if the conditions set forth in Rule 1.17 are satisfied. The estate of a deceased, disabled or disappeared lawyer may be a seller.

(a) The selling lawyer or law firm ceases to engage in the private practice of law in the geographic area wherein the practice has been conducted;

(b) The practice is sold as an entirety to another lawyer or law firm;

(c) Actual written notice is given to each of the seller's clients regarding:

(1) the proposed sale;

(2) the terms of any proposed change in the fee arrangement authorized by paragraph (d);

(3) the client's right to retain other counsel or take possession of the file; and

(4) the fact that the client's consent to the sale will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.

If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by any court having jurisdiction. The seller may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the file.

(d) The fees charged clients shall not be increased by reason of the sale. The purchaser may however refuse to undertake the representation unless the client consents to pay the purchaser's fees at a rate not exceeding the fee charged by the purchaser for rendering substantially similar services before the initiation of the purchase negotiations.

(e) For purposes of this rule, good will, as used herein, is defined as reputation, including use of the lawyer or law firm's name that will probably generate future business. However, any use of the lawyer or law firms name, after the sale or purchase of the subject law practice has been completed, must be accompanied with a notice that the selling lawyer or law firm is no longer engaged in the active practice of law.

(f) Notwithstanding the provisions of this rule, if the selling lawyer or law firm returns to the practice of law, then use of the selling lawyer or law firm's name must be discontinued by the purchasing lawyer or law firm. (Adopted August 20, 1998.)

COUNSELOR

Rule 2.1. Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

COMMENT

Scope of Advice. — A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

Advice couched in narrowly legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

Matters that go beyond strictly legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice. — In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, duty to the client under Rule 1.4 may require that the lawyer act if the client's course of action is related to the representation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

CODE COMPARISON

There is no direct counterpart to Rule 2.1 in the Disciplinary Rules of the Code. DR 5-107(B) provides that "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services." EC 7-8 states that "Advice of a lawyer to his client need not be confined to purely legal considerations. ... In assisting his client to reach a proper decision, it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. ... In the final analysis, however, ... the decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client. ..."

Rule 2.2. Lawyer serving as an intermediary between clients.

(a) A lawyer represents clients as an intermediary when the lawyer provides impartial legal advice and assistance to two or more clients who are engaged in a candid and non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them.

(b) A lawyer shall not represent two or more clients as an intermediary in a matter unless:

(1) as between the clients, the lawyer reasonably believes that the matter can be resolved on terms compatible with the best interests of each of the clients, that each client will be able to make adequately informed decisions in the matter, that there is little risk of material prejudice to the interest of any of the clients if the contemplated resolution is unsuccessful, and that the intermediation can be undertaken impartially;

(2) the lawyer's representation of each of the clients, or the lawyer's relationship with each, will not be adversely affected by the lawyer's responsibilities to other clients or third persons, or by the lawyer's own interests;

(3) the lawyer consults with each client about:

(i) the lawyer's responsibilities as an intermediary;

(ii) the implications of the intermediation (including the advantages and risks involved, the effect of the intermediation on the attorney-client privilege, and the effect of the intermediation on any other obligation of confidentiality the lawyer may have);

(iii) any circumstances that will materially affect the lawyer's impartiality between the clients; and

(iv) the lawyer's representation in another matter of a client whose interests are directly adverse to the interests of any one of the clients; and any interests of the lawyer, the lawyer's other clients, or third persons that will materially limit the lawyer's representation of one of the clients; and

(c) While representing clients as an intermediary, the lawyer shall:

(1) act impartially to assist the clients in accomplishing their common objective;

(2) as between the clients, treat information relating to the intermediation as information protected by Rule 1.6 that the lawyer has been authorized by each client to disclose to the other clients to the extent the lawyer reasonably believes necessary for the lawyer to comply with Rule 1.4; and

(3) consult with each client concerning the decisions to be made with respect to the intermediation and the considerations relevant in making them, so that each client can make adequately informed decisions.

(d) A lawyer shall withdraw from service as an intermediary if:

(1) any of the clients so requests;

(2) any of the clients revokes the lawyer's authority to disclose to the other clients any information that the lawyer would be required by Rule 1.4 to reveal to them; or

(3) any of the other conditions stated in paragraph (b) are no longer satisfied.

(e) If the lawyer's withdrawal is required by paragraph (d)(2) the lawyer shall so advise each client of the withdrawal, but shall do so without any further disclosure of information protected by Rule 1.6. (Adopted September 17, 2002, effective March 1, 2003; substantially rewritten effective November 3, 2005 to address specifically and exclusively lawyers intermediating between clients.)

COMMENT

A lawyer acts as an intermediary under this Rule when the lawyer represents two or more clients who are cooperatively trying to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them. The hallmarks of an intermediation include the impartiality of the lawyer who serves as an intermediary; the open, candid, and non-adversarial nature of the clients' pursuit of a common objective; and the limited subject matters in which a lawyer may serve multiple clients as an intermediary (i.e., the adjustment of a consensual legal relationship among or between the clients). Because intermediation differs significantly from the partisan role normally played by lawyers, and because it requires that the lawyer be impartial as between the clients rather than an advocate on behalf of each, a lawyer should only undertake this role with client consent after consultation about the distinctive features of this role. Also, given the risks associated with joint representation of parties whose interests may potentially be in conflict, the Rule provides a number of safeguards designed to limit its applicability and to protect the interests of the several clients.

Paragraph (b) specifies the circumstances in which a lawyer may serve multiple clients as an intermediary. With respect to the clients being served by an intermediary, this Rule, and not Rule 1.7, applies. Rule 1.7 remains applicable, however, to protect other clients the lawyer may be representing or may wish to represent in other matters. For example, if the lawyer's representation of two clients as an intermediary in a matter will materially limit the lawyer's representation of another client the lawyer is representing as an advocate, the lawyer must afford that client the protections of Rule 1.7. Similarly, if the lawyer's representation of two clients as an intermediary would be materially adverse to one of the lawyer's former clients and the matters are substantially related, the lawyer must afford the former client the protection of Rule 1.9.

Rule 2.2 does not apply to a lawyer acting as a dispute resolution neutral, such as an arbitrator or a mediator, as the parties to a dispute resolution proceeding are not clients of the lawyer, even where the lawyer has been appointed with the concurrence of the parties. Other rules of conduct govern a lawyer's service as a dispute resolution neutral. See Rule 2.4.

Because this Rule only applies to the formation, conduct, modification or termination of consensual legal relationships between clients, it does not apply to the representation of multiple clients in connection with gratuitous transfers or other matters in which there is not a quid pro quo exchange. Thus, for example, conflicts of interest arising from the representation of multiple clients in estate planning or the administration of an estate are governed by Rule 1.7 rather than by this Rule. If, however, the effectuation of an estate plan or other gratuitous transfer entails the formation, modification or termination of a consensual legal relationship between clients, and the lawyer acts as an intermediary in connection with the transaction, this Rule, and not Rule 1.7, will apply.

A lawyer may act as an intermediary in seeking to establish or adjust a consensual legal relationship among or between clients on an amicable and mutually advantageous basis, such as helping to organize a business in which two or more clients are entrepreneurs or working out the financial reorganization of an enterprise in which two or more clients have an interest. As part of the work of an intermediary, the lawyer may seek to achieve the clients' common objective or to resolve potentially conflicting interests by developing the parties' mutual interests. The alternative may be that each party may have to obtain separate representation, with the possibility in some situations of incurring additional cost, complications, or even litigation. Given these and other relevant factors, each client may prefer to have one lawyer act as an intermediary for all rather than hiring a separate lawyer to serve as his or her partisan.

In considering whether to act as an intermediary between clients, a lawyer should be mindful that if the intermediation fails, the result can be additional cost, embarrassment, and recrimination. In some situations, the risk of failure is so great that intermediation is plainly impossible or imprudent for the lawyer or the clients. For example, a lawyer cannot undertake common representation of clients between whom contentious litigation is imminent or who contemplate contentious negotiations, as is often the case when dissolution of a marriage is involved. More generally, if the relationship between the parties has already assumed definite antagonism, the possibility that the clients' interests can be adjusted by intermediation ordinarily is not very good.

The appropriateness of intermediation can depend on its form. Forms of intermediation range from an informal "facilitation," in which the lawyer's responsibilities are limited to presenting alternatives from which the clients will choose, to a full-blown representation in which the lawyer provides all legal services needed in connection with the proposed transaction. One form may be appropriate in circumstances where another would not. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis; whether the situation involves creating a relationship between the parties or terminating one; the relative experience, sophistication, and economic bargaining power of the clients; and the existence of prior familial, business, or legal relationships.

Confidentiality and privilege. — A particularly important factor in determining the appropriateness of intermediation is the effect on client-lawyer confidentiality and the attorney-client privilege. In a common representation, the lawyer is still required both to keep each client adequately informed and to maintain confidentiality of information relating to the representation. See Rules 1.4 and 1.6. Complying with both requirements while acting as an intermediary requires a delicate balance. If the balance cannot be maintained, the common representation is improper.

Paragraphs (b)(4) and (c)(2) make clear that the obligations of attorney-client confidentiality apply to clients being served by a lawyer as an intermediary, but that, as between the clients being so served, confidentiality is inappropriate and must be waived by each of the clients. Thus, while the lawyer must maintain confidentiality as against strangers to the relationship, the lawyer has no such duty to keep information provided to the lawyer by one client confidential from the other clients. Moreover, the lawyer may well, depending on the circumstances, have an affirmative obligation to disclose such information obtained from one client to other clients. Obviously, this important implication of the lawyer's responsibilities as an intermediary must be disclosed and explained to the clients. Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented one of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

Since the lawyer is required to be impartial between commonly represented clients, intermediation is improper when that impartiality cannot be maintained. For example, a lawyer who has represented one of the clients for a long period and in a variety of matters might have difficulty being impartial between that client and one to whom the lawyer has only recently been introduced.

Consultation. — In acting as an intermediary between clients, the lawyer is required to consult with the clients on the implications of doing so and may proceed only upon consent based on such a consultation. The consultation should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances. This consent must be in writing.

Paragraph (c)(3) is an application of the principle expressed in Rule 1.4. Where the lawyer is an intermediary, the clients ordinarily must assume greater responsibility for decisions than when each client is independently represented.

Withdrawal. — Common representation does not diminish the rights of each client in the client-lawyer relationship. Each client has the right to loyal and diligent representation, the right to discharge the lawyer as stated in Rule 1.16, and the protection of Rule 1.9 concerning obligations to a former client.

Because of the obligations of a lawyer serving as an intermediary to the intermediation clients, the lawyer must withdraw from the representation if any of the intermediation clients so requests; if one or more of the clients denies the lawyer the authority to disclose certain information to any of the remaining clients, thereby preventing the lawyer from being able to discharge the lawyer's duties to the remaining clients to communicate with them and disclose information to them; or if any of the various predicate requirements for intermediation can no longer be satisfied.

Upon withdrawal from the role of intermediary or completion of an intermediation, the lawyer must afford all of the clients formerly served as an intermediary the protections of Rules 1.9 and 1.10.

[Amended effective November 3, 2005.]

CODE COMPARISON

There is no direct counterpart to Rule 2.2 in the Disciplinary Rules of the Code. EC 5-20 states that "A lawyer is often asked to serve as an impartial arbitrator or mediator in matters which involve present or former clients. He may serve in either capacity if he first discloses such present or former relationships." DR 5-105(B) provides that "A lawyer shall not continue multiple employment if the exercise of his independent judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, or if it would involve him in representation of differing interests, except to the extent permitted under DR 5-105(C)." DR 5-105(C) provides that "A lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation on the exercise of his independent professional judgment on behalf of each.

Rule 2.3. Evaluation for use by third persons.

(a) A lawyer may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(1) the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client; and

(2) The client gives informed consent in writing.

(b) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6. (Amended effective November 3, 2005.)

COMMENT

Definition. — An evaluation may be performed at the client's direction but for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

Lawyers for the government may be called upon to give a formal opinion on the legality of contemplated government agency action. In making such an evaluation, the government lawyer acts at the behest of the government as the client but for the purpose of establishing the limits of the agency's authorized activity. Such an opinion is to be distinguished from confidential legal advice given agency officials. The critical question is whether the opinion is to be made public.

A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in the Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duty to Third Person. — When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclose of Information. — The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations which are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances.

Financial Auditors' Requests for Information. — When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

CODE COMPARISON

There is no counterpart to Rule 2.3 in the Code.

Rule 2.4. Lawyers serving as third party neutrals.

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client. (Adopted effective November 3, 2005.)

COMMENT

Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

The role of a third-party neutral is not unique to lawyers, although, in some court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

Unlike non-lawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

Lawyers who represent clients in alterative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration, the lawyer's duty of candor is governed by Rule 3.3 Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

[Adopted effective November 3, 2005.]

ADVOCATE

Rule 3.1. Meritorious claims and contentions.

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and in fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established. (Amended effective November 3, 2005 to add the phrase "in law and in fact".)

COMMENT

The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

CODE COMPARISON

DR 7-102(A)(1) provides that a lawyer may not "file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another." Rule 3.1 is to the same general effect as DR 7-102(A)(1), with three qualifications. First, the test of improper conduct is changed from "merely to harass or maliciously injure another" to the requirement that there be a basis for the litigation measure involved that is "not frivolous." This includes the concept stated in DR 7-102(A)(2) that a lawyer may advance a claim or defense unwarranted by existing law if "it can be supported by good faith argument for an extension, modification, or reversal of existing law." Second, the test in Rule 3.1 is an objective test, whereas DR 7-102(A)(1) applies only if the lawyer "knows or when it is obvious" that the litigation is frivolous. Third, Rule 3.1 has an exception that in a criminal case, or a case in which incarceration of the client may result (for example, certain juvenile proceedings), the lawyer may put the prosecution to its proof even if there is no nonfrivolous basis for defense.

JUDICIAL DECISIONS

Ineffective assistance of counsel.
It appears to be problematic and inappropriate for an attorney who represents a criminal defendant at trial to represent that same defendant on appeal where the attorney intends to raise an ineffective assistance of counsel claim in that appeal. Hill v. State, 749 So. 2d 1143 (Miss. Ct. App. 1999).

Rule 3.2. Expediting litigation.

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

COMMENT

Dilatory practices bring the administration of justice into disrepute. Delay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

CODE COMPARISON

DR 7-102(A)(1) provides that "A lawyer shall not ... file a suit, assert a position, conduct a defense (or) delay a trial ... when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another."

JUDICIAL DECISIONS

Sanctions.
— Suspension.

Sanctions.

— Suspension.
Disbarment was warranted for attorney's repeated acts, some while under suspension, of taking money from clients, promising to act as their counsel, and, through deceit, doing nothing. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

Rule 3.3. Candor toward the tribunal.

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT

The advocate's task is to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client is qualified by the advocate's duty of candor to the tribunal. However, an advocate does not vouch for the evidence submitted in a cause; the tribunal is responsible for assessing its probative value.

Representations by a Lawyer. — An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Misleading Legal Argument. — Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction which has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

False Evidence. — When evidence that a lawyer knows to be false is provided by a person who is not the client, the lawyer must refuse to offer it regardless of the client's wishes.

When false evidence is offered by the client, however, a conflict may arise between the lawyer's duty to keep the client's revelations confidential and the duty of candor to the court. Upon ascertaining that material evidence is false, the lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed. If the persuasion is ineffective, the lawyer must take reasonable remedial measures.

Except in the defense of a criminal accused, the rule generally recognized is that, if necessary to rectify the situation, an advocate must disclose the existence of the client's deception to the court or to the other party. Such a disclosure can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Perjury by a Criminal Defendant. — Whether an advocate for a criminally accused has the same duty of disclosure has been intensely debated. While it is agreed that the lawyer should seek to persuade the client to refrain from perjurious testimony, there has been dispute concerning the lawyer's duty when that persuasion fails. If the confrontation with the client occurs before trial, the lawyer ordinarily can withdraw. Withdrawal before trial may not be possible, however, either because trial is imminent, or because the confrontation with the client does not take place until the trial itself, or because no other counsel is available.

The most difficult situation, therefore, arises in a criminal case where the accused insists on testifying when the lawyer knows that the testimony is perjurious. The lawyer's effort to rectify the situation can increase the likelihood of the client's being convicted as well as opening the possibility of a prosecution for perjury. On the other hand, if the lawyer does not exercise control over the proof, the lawyer participates, although in a merely passive way, in deception of the court.

Three resolutions of this dilemma have been proposed. One is to permit the accused to testify by a narrative without guidance through the lawyer's questioning. This compromises both contending principles; it exempts the lawyer from the duty to disclose false evidence but subjects the client to an implicit disclosure of information imparted to counsel. Another suggested resolution, of relatively recent origin, is that the advocate be entirely excused from the duty to reveal perjury if the perjury is that of the client. This is a coherent solution but makes the advocate a knowing instrument of perjury.

The other resolution of the dilemma is that the lawyer must reveal the client's perjury if necessary to rectify the situation. A criminal accused has a right to the assistance of an advocate, a right to testify and a right of confidential communication with counsel. However, an accused should not have a right to assistance of counsel in committing perjury. Furthermore, an advocate has an obligation, not only in professional ethics but under the law as well, to avoid implication in the commission of perjury or other falsification of evidence. See Rule 1.2(d).

Remedial Measures. — If perjured testimony or false evidence has been offered, the advocate's proper course ordinarily is to remonstrate with the client confidentially. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal will not remedy the situation or is impossible, the advocate should make disclosure to the court. It is for the court then to determine what should be done—making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing. If the false testimony was that of the client, the client may controvert the lawyer's version of their communication when the lawyer discloses the situation to the court. If there is an issue whether the client has committed perjury, the lawyer cannot represent the client in resolution of the issue, and a mistrial may be unavoidable. An unscrupulous client might in this way attempt to produce a series of mistrials and thus escape prosecution. However, a second such encounter could be construed as a deliberate abuse of the right to counsel and as such a waiver of the right to further representation.

Constitutional Requirements. — The general rule—that an advocate must disclose the existence of perjury with respect to a material fact, even that of a client—applies to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. In some jurisdictions these provisions have been construed to require that counsel present an accused as a witness if the accused wishes to testify, even if counsel knows the testimony will be false. The obligation of the advocate under these Rules is subordinate to such a constitutional requirement.

Duration of Obligation. — A practical time limit on the obligation to rectify the presentation of false evidence has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation.

Refusing to Offer Proof Believed to Be False. — Generally speaking, a lawyer has authority to refuse to offer testimony or other proof that the lawyer believes is untrustworthy. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. In criminal cases, however, a lawyer may, in some jurisdictions, be denied this authority by constitutional requirements governing the right to counsel.

Ex Parte Proceedings. — Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in an ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

CODE COMPARISON

Rule 3.3(a)(1) is substantially identical to DR 7-102(A)(5), which provides that a lawyer shall not "knowingly make a false statement of law or fact."

Rule 3.3(a)(2) is implicit in DR 7-102(A)(3), which provides that "a lawyer shall not ... knowingly fail to disclose that which he is required by law to reveal."

Rule 3.3(a)(3) is identical to DR 7-106(B)(1).

With regard to Rule 3.3(a)(4), the first sentence of this subparagraph is similar to DR 7-102(A)(4), which provides that a lawyer shall not "knowingly use" perjured testimony or false evidence. The second sentence of Rule 3.3(a)(4) resolves an ambiguity in the Code concerning the action required of a lawyer when he discovers that he has offered perjured testimony or false evidence. DR 7-102(A)(4), quoted above, does not expressly deal with this situation, but the prohibition against "use" of false evidence can be construed to preclude carrying through with a case based on such evidence when that fact has become known during the trial. DR 7-102(B)(1), also noted in connection with Rule 1.6, provides that "a lawyer who receives information clearly establishing that ... his client has ... perpetrated a fraud upon ... a tribunal shall if the client does not rectify the situation ... reveal the fraud to the ... tribunal...." Since use of perjured testimony or false evidence is usually regarded as "fraud" upon the court, DR 7-102(B)(1) apparently requires disclosure by the lawyer in such circumstances. However, some states have amended DR 7-102(B)(1) in conformity with an ABA-recommended amendment to provide that the duty of disclosure does not apply when the "information is protected as a privileged communication." This qualification may be empty, for the rule of attorney-client privilege has been construed to exclude communications that further a crime, including the crime of perjury. On this interpretation of DR 7-102(B)(1), the lawyer has a duty to disclose the perjury.

Rule 3.3(c) confers discretion on the lawyer to refuse to offer evidence that he "reasonably believes" is false. This gives the lawyer more latitude than DR 7-102(A)(4), which prohibits the lawyer from offering evidence the lawyer "knows" is false.

There is no counterpart in the Code to paragraph (d). Hyde v. Berggren, 249 Miss. 860, 164 So. 2d 454 (1964); 92 A.L.R.3d 1232; 73 A.L.R.4th 938; Jones v. Southern United Ice Co., 167 Miss. 886, 150 So. 652 (1933); Mobile & O.R. Co., v. Watly, 69 Miss. 475, 12 So. 558 (1891).

JUDICIAL DECISIONS

Conduct constituting violation.
Denial of wrongdoing.
Ex parte proceedings.
Potential perjury of client.
Sanctions.
— Disbarment.
— Public reprimand.
— Suspension.

Conduct constituting violation.

Where attorney responded to interrogatories without revealing incident relevant to causation of injury in suit against his client, his actions went far beyond what could be considered a discovery dispute, and amounted to conduct involving dishonesty, deceit, misrepresentation, obstructing another party's access to evidence, conduct prejudicial to administration of justice, and both failure to disclose a material fact and making a false statement of material fact to a tribunal. Mississippi Bar v. Land, 653 So. 2d 899 (Miss. 1994).

Attorney's knowing misrepresentations to court and opposing counsel that no autopsy had been performed on deceased's body were in violation of this rule and were prejudicial to the administration of justice. Mississippi Bar v. Mathis, 620 So. 2d 1213 (Miss. 1993).

Denial of wrongdoing.

An attorney did not violate Rule 3.3(a)(1) by denying improper conduct in his response to a court petition accusing the attorney of violating the ethics rules; a denial in a pleading, even if later proven true, is not a violation of the duty of candor towards the tribunal. Mississippi Bar v. Logan, 726 So. 2d 170 (Miss. 1998).

Ex parte proceedings.

Where defense counsel revealed to a trial judge in an ex parte conference that a defendant had confessed to the murder and was intent on falsely testifying, the trial judge did not allow counsel to withdraw from the case and did not commit manifest error in failing to recuse herself; the judge was not the ultimate trier of fact because it was a jury trial. Scott v. State, 8 So. 3d 855 (Miss. 2008), writ of certiorari denied by 559 U.S. 941, 130 S. Ct. 1500, 176 L. Ed. 2d 117, 2010 U.S. LEXIS 1205, 78 U.S.L.W. 3480 (2010).

Trial judge never was given the opportunity to perform his affirmative responsibility to accord an absent party just consideration, as required by Miss. R. Prof. Conduct 3.3(d), cmt., because plaintiff's attorney did not present to the trial judge the facts known to her, such as defendant being represented by an attorney, the identity of that attorney, defendant's previous filing of a motion to dismiss, and the settlement negotiations between the attorneys. Johnson v. Thomas, 982 So. 2d 405 (Miss. 2008).

Potential perjury of client.

Defendant was denied his right to a fair trial because the trial judge, sitting as finder of fact on defendant's motion to suppress, was informed by defense counsel that defendant had confessed to counsel that he committed the crime and that he intended to offer perjured testimony at trial, and therefore, the trial judge should have recused herself from hearing the motion to suppress, and her failure to do so deprived defendant of his right to due process. Scott v. State, 8 So. 3d 871 (Miss. Ct. App. 2008), reversed by 8 So. 3d 855, 2008 Miss. LEXIS 589 (Miss. 2008).

Sanctions.

— Disbarment.

Attorney's conduct constituted a violation of the ethical rules because the attorney knowingly and willfully filed a bankruptcy petition on another individual's behalf despite a lack of authority to do so, and then forged that individual's signature on various documents presented to the bankruptcy court; the egregiousness of the attorney's actions, combined with his history of ethical violations warranted disbarment. Miss. Bar v. Labovitz, 226 So. 3d 92 (Miss. 2016).

Three-year suspension was reversed and disbarment ordered, for attorney who misled his client, misrepresented to court that his client had agreed to terms which she in fact had not agreed to, and presented a document to the court containing a signature which was not his client's.

Culpepper v. Mississippi State Bar, 588 So. 2d 413 (Miss. 1991).

— Public reprimand.

Attorney was sanctioned for making a statement about a judge's election contributions during a motion to recuse because the attorney violated Miss. R. Prof. Conduct 3.3 and Miss. R. Prof. Conduct 8.2 by knowingly repeating remarks that had been proven to be false. Welsh v. Mounger, 912 So. 2d 823 (Miss. 2005).

— Suspension.

Attorney who forged client's signature on motion, and then deliberately deceived court regarding authenticity of the signature, was suspended from practice of law for one hundred eighty days. Goodsell v. Mississippi Bar, 667 So. 2d 7 (Miss. 1996).

Rule 3.4. Fairness to opposing party and counsel.

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

COMMENT

The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information.

With regard to paragraph (b), it is not improper to pay a witness's expenses or to compensate an expert witness on terms permitted by law. The common law rule in most jurisdictions is that it is improper to pay an occurrence witness any fee for testifying and that it is improper to pay an expert witness a contingent fee.

Paragraph (f) permits a lawyer to advise employees of a client to refrain from giving information to another party, for the employees may identify their interests with those of the client. See also Rule 4.2.

CODE COMPARISON

With regard to Rule 3.4(a), DR 7-109(A) provides that "a lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal." DR 7-109(B) provides that "a lawyer shall not advise or cause a person to secrete himself ... for the purpose of making him unavailable as a witness...." DR 7-106(C)(7) provides that a lawyer shall not "intentionally or habitually violate any established rule of procedure or of evidence."

With regard to Rule 3.4(b), DR 7-102(B)(6) provides that a lawyer shall not "participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false." DR 7-109 provides that "a lawyer shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent on the content of his testimony or the outcome of the case. But a lawyer may advance, guarantee or acquiesce in the payment of: (1) expenses reasonably incurred by a witness in attending or testifying; (2) reasonable compensation to a witness for his loss of time in attending or testifying; (or) (3) a reasonable fee for the professional services of an expert witness." EC 7-28 states that "witnesses should always testify truthfully and should be free from any financial inducements that might tempt them to do otherwise."

Rule 3.4(c) is substantially similar to DR 7-106(A), which provides that "A lawyer shall not disregard ... a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling."

Rule 3.4(d) has no counterpart in the Code.

Rule 3.4(e) substantially incorporates DR 7-106(C)(1), (2), (3) and (4). DR 7-106(C)(2) proscribes asking a question "intended to degrade a witness or other person," a matter dealt with in Rule 4.4. DR 7-106(C)(5), providing that a lawyer shall not "fail to comply with known local customs of courtesy or practice," is too vague to be a rule of conduct enforceable as law.

With regard to Rule 3.4(f), DR 7-104(A)(2) provides that a lawyer shall not "give advice to a person who is not represented ... other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client." Helbig v. Hooper, 200 Miss. 282, 25 So. 2d 404 (1946); Graves v. Fulton, 8 Miss. (7 Howard) 592 (1843); Middleton v. National Box Co., 38 F.2d 89 (D.C. 1930); Schloss & Rothschild v. Haupt, 69 So. 295 (Miss. 1915); Levy v. T.R. Rosell & Co., 82 Miss. 527, 34 So. 321 (1903).

JUDICIAL DECISIONS

Discovery violations.
Inducement to witness.
Sanctions.
— Disbarment.
— Suspension.
Violation of court rules.

Discovery violations.

Where attorney responded to interrogatories without revealing incident relevant to causation of injury in suit against his client, his actions went far beyond what could be considered a discovery dispute, and amounted to conduct involving dishonesty, deceit, misrepresentation, obstructing another party's access to evidence, conduct prejudicial to administration of justice, and both failure to disclose a material fact and making a false statement of material fact to a tribunal. Mississippi Bar v. Land, 653 So. 2d 899 (Miss. 1994).

Inducement to witness.

Although witness fees and expenses paid to victim's husband and to state's expert witness were improper, there was no indication that witnesses' testimony changed based on payments they received, and no prejudice resulting from the payments could be demonstrated. Woodward v. State, 726 So. 2d 524 (Miss. 1997), cert. denied, 526 U.S. 1041, 119 S. Ct. 1338, 143 L. Ed. 2d 502 (1999).

Sanctions.

— Disbarment.

Three-year suspension was reversed and disbarment ordered, for attorney who misled his client, misrepresented to court that his client had agreed to terms which she in fact had not agreed to, and presented a document to the court containing a signature which was not his client's. Culpepper v. Mississippi State Bar, 588 So. 2d 413 (Miss. 1991).

— Suspension.

Attorney who failed to furnish obvious information to opposing counsel, and who employed deceit and misrepresentation in arranging for arrest of opposing party, merited suspension from practice of law for a period of six months. Mississippi Bar v. Robb, 684 So. 2d 615 (Miss. 1996), cert. denied, 520 U.S. 1117, 117 S. Ct. 1248, 137 L. Ed. 2d 330 (1997).

Attorney who accepted compensation from bankruptcy clients without first petitioning court for approval, and who failed to tender payment to bankruptcy trustee within ninety days after signing court order agreeing to do so, was suspended from practice of law for six months. Mathes v. Mississippi Bar, 637 So. 2d 840 (Miss. 1994).

Violation of court rules.

Wilful violation of Miss. Unif. Ch. Ct. R. 1.06, adopted and effective May 29, 2003, may constitute an offense subject to suspension and other discipline under Miss. R. Prof. Conduct 3.4(c). Sanctions authorized by the rule are cumulative to discipline under the Mississippi Rules of Professional Conduct. In re Unif. Ch. Ct. Rules, — So. 2d —, 2003 Miss. LEXIS 252 (Miss. May 29, 2003).

Rule 3.5. Impartiality and decorum of the tribunal.

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order: or

(2) the juror has made known to the lawyer a desire not to communicate.

(d) engage in conduct intended to disrupt a tribunal. (Amended effective November 3, 2005 to add new subsection (c).)

COMMENT

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

CODE COMPARISON

With regard to Rule 3.5(a), DR 7-108(A) provides that "before the trial of a case a lawyer ... shall not communicate with ... anyone he knows to be a member of the venire ...." DR 7-108(B) provides that "during the trial of a case ... a lawyer ... shall not communicate with ... a juror concerning the case." DR 7-109(C) provides that a lawyer shall not "communicate ... as to the merits of the cause with a judge or an official before whom the proceeding is pending except ... upon adequate notice to opposing counsel ... (or) as otherwise authorized by law."

With regard to Rule 3.5(b), DR 7-106(C)(6) provides that a lawyer shall not "engage in undignified or discourteous conduct which is degrading to a tribunal." Griffin v. State, 565 So. 2d 545 (Miss. 1990); Cashin v. Murphy, 132 Miss. 834, 96 So. 747 (1923); Fletcher v. State, 60 Miss. 675 (1882).

JUDICIAL DECISIONS

Contempt.
Ex parte communications.
"Other official."
Suspension.

Contempt.

Defendant, an attorney, was guilty of direct criminal contempt for displaying willful, contemptuous conduct in the courtroom that interfered with the orderly administration of justice where he restarted his argument following the pronouncement of the sentence; defendant's announced purposed of diligently representing his client did not excuse the conduct that violated professional conduct rules. Defendant also violated a rule stating that attorneys had to manifest an attitude of professional respect towards the judge. Spore v. State, 214 So. 3d 223 (Miss. 2017).

Ex parte communications.

Ex parte communication by a lawyer with a magistrate for the purposes of obtaining procedural advice is not a violation of the rule in light of the fact that it appeared to be a common and accepted practice during the time period. Mississippi Bar v. Logan, 726 So. 2d 170 (Miss. 1998).

Attorney who telephoned juror and alternate juror and recorded their conversations, and who represented to them that he had approval to talk to them when in fact he did not, received private reprimand for violation of this rule. Attorney L.S. v. Mississippi Bar, 649 So. 2d 810 (Miss. 1994).

"Other official."

A magistrate for the Supreme Court was an "other official" within the meaning of this rule even though he may not have had the authority to rule on a motion; his duties included research and preparing memorandums outlining his recommendations, which, "were quite often followed by the Court." Mississippi Bar v. Logan, 726 So. 2d 170 (Miss. 1998).

Suspension.

Attorney was suspended, partially due to prior similar conduct, for violating Miss. R. Prof. Conduct 3.5, 8.4, 8.2 where the evidence showed that the attorney made disparaging remarks to a judge relating to "paying for justice" and later told a newspaper reporter that the judge a barbarian; the statements were not protected by the First Amendment because a reasonable person would not have acted in the same manner. Miss. Bar v. Lumumba, 912 So. 2d 871 (Miss. 2005), writ of certiorari denied by 546 U.S. 825, 126 S. Ct. 363, 163 L. Ed. 2d 70, 2005 U.S. LEXIS 6085, 74 U.S.L.W. 3202 (2005).

Rule 3.6. Trial publicity.

(a) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

(b) A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test of the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and would if disclosed create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

(c) Notwithstanding paragraph (a) and (b)(1-5), a lawyer involved in the investigation or litigation of a matter may state without elaboration:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case:

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

COMMENT

It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

No body of rules can simultaneously satisfy all interests of fair trial and all those of free expression. The formula in this Rule is based upon the ABA Model Code of Professional Responsibility and the ABA Standards Relating to Fair Trial and Free Press, as amended in 1978.

Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such Rules.

CODE COMPARISON

Rule 3.6 is similar to DR 7-107, except as follows: First, Rule 3.6 adopts the general criteria of "substantial likelihood of materially prejudicing an adjudicative proceeding" to describe impermissible conduct. Second, Rule 3.6 transforms the particulars in DR 7-107 into an illustrative compilation that gives fair notice of conduct ordinarily posing unacceptable dangers to the fair administration of justice. Finally, Rule 3.6 omits DR 7-107(C)(7), which provides that a lawyer may reveal "at the time of seizure, a description of the physical evidence seized, other than a confession, admission or statement." Such revelations may be substantially prejudicial and are frequently the subject of pretrial suppression motions, which, if successful, may be circumvented by prior disclosure to the press.

JUDICIAL DECISIONS

Application of gag order.
Evidence.

Application of gag order.

Because the Attorney General did not know about the gag order in effect, he could not have violated the rules, not knowing of the possible prejudicial effects of statements he made concerning the petition before the Supreme Court. State v. Culp, 823 So. 2d 510 (Miss. 2002).

Evidence.

A district attorney's comments to the press on the day prior to trial were improper and in violation of the rule where the district attorney stated that the case was strong and would prove the defendant's guilt. Gulley v. State, 779 So. 2d 1140 (Miss. Ct. App. 2001).

RESEARCH REFERENCES

Practice References. Joseph F. Lawless, Prosecutorial Misconduct: Law, Procedure, Forms, Fourth Edition (Michie).

Rule 3.7. Lawyer as witness.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

COMMENT

Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client.

The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has first hand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the opposing party. Whether the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The principle of imputed disqualification stated in Rule 1.10 has no application to this aspect of the problem.

Whether the combination of roles involves an improper conflict of interest with respect to the client is determined by Rule 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer or a member of the lawyer's firm, the representation is improper. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. See Comment to Rule 1.7. If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, Rule 1.10 disqualifies the firm also.

CODE COMPARISON

DR 5-102(A) prohibits a lawyer, or the lawyer's firm, from serving as advocate if the lawyer "learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client." DR 5-102(B) provides that a lawyer, and the lawyer's firm, may continue representation if the "lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client ... until it is apparent that his testimony is or may be prejudicial to his client." DR 5-101(B) permits a lawyer to testify while representing a client: "(1) If the testimony will relate solely to an uncontested matter; (2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; (3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client; (4) As to any matter if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case."

The exception stated in (a)(1) consolidates provisions of DR 5-101(B)(1) and (2). Testimony relating to a formality, referred to in DR 5-101(B)(2), in effect defines the phrase "uncontested issue," and is redundant.

See MSB Ethics Opinion No. 76. Eastman, Gardiner & Co. v. Caldwell, 177 Miss. 861, 172 So. 126 (1937).

JUDICIAL DECISIONS

Illustrative cases.

Pursuant to Miss. R. Prof. Conduct 3.7(a) and 1.10(a), there was no cause to disqualify a law firm that represented defendants, although plaintiff had met with two of the firm's attorneys in his capacity as a national commander of a military order, as even if the attorneys were used as witnesses in the case, the information discussed with them was not confidential. Cook v. Wallot, 172 So. 3d 788 (Miss. Ct. App. 2013).

Since one of defendant insured employer's attorney's testimony was relevant and necessary as to the employer's knowledge of its rights to independent counsel, the reasonableness of its reliance on any of plaintiff insurer's omissions, and any resulting prejudice, he was disqualified under Miss. R. Prof. Conduct 3.7, but since it was not premised on a real conflict of interest, the attorney's firm would not be sua sponte disqualified. Liberty Mut. Ins. Co. v. Tedford, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 9754 (N.D. Miss. Feb. 9, 2009).

Where plaintiff's brother represented him in an action for a prescriptive easement, the judge acted within his discretion in allowing the attorney to testify on his brother's behalf; the attorney ceased his advocacy on behalf of his brother when he was brought in to testify. Graves v. Dudley Maples, L.P., 950 So. 2d 1017 (Miss. 2007).

There was no need to challenge the authentication of the bag and its contents, which included the victim's gun, money, food stamps, and coin wrappers, because the bag was found in co-defendant's yard and only served to reinforce the defense's theory that co-defendant, not defendant, killed the victim. Therefore, one of defendant's attorney's was not ineffective for failing to withdraw from the case as she was not an authenticating witness. Branch v. State, 882 So. 2d 36 (Miss. 2004), writ of certiorari denied by 544 U.S. 907, 125 S. Ct. 1595, 161 L. Ed. 2d 282, 2005 U.S. LEXIS 2289, 73 U.S.L.W. 3530 (2005).

Judge was well within his discretion in requiring, on his own motion, withdrawal of counsel to both parties in election contest, where both attorneys were to be witnesses on contested issues of the election. Pearson v. Parsons, 541 So. 2d 447 (Miss. 1989).

Rule 3.8. Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; and

(e) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

COMMENT

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. See also Rule 3.3(d), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

With reference to paragraphs (b) and (d), see Mississippi Uniform Criminal Rules of Circuit Court Practice, 1.04 and 4.06.

Paragraph (c) does not apply to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

CODE COMPARISON

DR 7-103(A) provides that "A public prosecutor ... shall not institute ... criminal charges when he knows or it is obvious that the charges are not supported by probable cause." DR 7-103(B) provides that "A public prosecutor ... shall make timely disclosure ... of the existence of evidence, known to the prosecutor ... that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment."

JUDICIAL DECISIONS

Violation.

Prosecutor's failure to disclose the contents of ATF reports was in error and in bad faith, because the fact that the records contained nothing incriminating demonstrated evidence in favor of defendant and the prosecutor's statement he engaged in a practice of disposing of exculpatory evidence demonstrated bad faith. Blakeney v. State, 236 So. 3d 11 (Miss. 2017).

RESEARCH REFERENCES

Practice References. Joseph F. Lawless, Prosecutorial Misconduct: Law, Procedure, Forms, Fourth Edition (Michie).

Rule 3.9. Advocate in non-adjudicative proceedings.

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5. (Amended effective November 3, 2005 to adopt language: "legislative body or administrative agency" to replace prior text.)

COMMENT

In representation before bodies such as legislature, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure.

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This Rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in such a transaction is governed by Rules 4.1 through 4.4.

CODE COMPARISON

EC 7-15 states that "A lawyer appearing before an administrative agency, regardless of the nature of the proceeding it is conducting, has the continuing duty to advance the cause of his client within the bounds of the law." EC 7-16 states that "When a lawyer appears in connection with proposed legislation, he ... should comply with applicable laws and regulations." EC 8-5 states that "Fraudulent, deceptive, or otherwise illegal conduct by a participant in a proceeding before a ... legislative body should never be participated in ... by lawyers." DR 7-106(B)(1) provides that "In presenting a matter to a tribunal, a lawyer shall disclose ... unless privileged or irrelevant, the identity of the clients he represents and of the persons who employed him."

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in statements to others.

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

COMMENT

Misrepresentation. — A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act or by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact. — This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Fraud by Client. — Paragraph (b) recognizes that substantive law, for example, Miss. Code Ann. Section 97-1-3 (1972), may require a lawyer to disclose certain information to avoid being deemed to have assisted the client's crime or fraud. The requirement of disclosure created by this paragraph is, however, subject to the obligations created by Rule 1.6.

[Amended effective November 3, 2005.]

CODE COMPARISON

Rule 4.1(a) is substantially similar to DR 7-102(A)(5), which states that "In his representation of a client, a lawyer shall not ... knowingly make a false statement of law or fact."

With regard to Rule 4.1(b), DR 7-102(A)(3) provides that a lawyer shall not "conceal or knowingly fail to disclose that which he is required by law to reveal." James v. State, 77 Miss. 370, 26 So. 929, 78 Am. St. R. 527 (1900); Thomas v. Cook, 236 Miss. 365, 109 So. 2d 861 (1959); Huston v. King, 119 Miss. 347, 80 So. 779 (1919); 13 A.L.R.4th 1060.

JUDICIAL DECISIONS

Sanctions.
— Suspension.
Taping of telephone conversations.

Sanctions.

— Suspension.

Attorney who failed to furnish obvious information to opposing counsel, and who employed deceit and misrepresentation in arranging for arrest of opposing party, merited suspension from practice of law for a period of six months. Mississippi Bar v. Robb, 684 So. 2d 615 (Miss. 1996), cert. denied, 520 U.S. 1117, 117 S. Ct. 1248, 137 L. Ed. 2d 330 (1997).

Attorney who forged client's signature on motion, and then deliberately deceived court regarding authenticity of the signature, was suspended from practice of law for one hundred eighty days. Goodsell v. Mississippi Bar, 667 So. 2d 7 (Miss. 1996).

Taping of telephone conversations.

Attorney who telephoned juror and alternate juror and recorded their conversations, and who represented to them that he had approval to talk to them when in fact he did not, received private reprimand for violation of this rule. Attorney L.S. v. Mississippi Bar, 649 So. 2d 810 (Miss. 1994).

Although attorney was acting to protect his client's interests in surreptitiously taping telephone conversations with judge and police chief, attorney violated this rule when he blatantly denied, when asked, that he was taping the conversations. Mississippi Bar v. Attorney ST, 621 So. 2d 229 (Miss. 1993).

Rule 4.2. Communication with person represented by counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

COMMENT

This Rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification for communicating with the other party is permitted to do so. Communications authorized by law include, for example, the right of a party to a controversy with a government agency to speak with government officials about the matter.

In the case of an organization, this rule prohibits communications by a lawyer for one party concerning the matter in representation with persons having a managerial responsibility on behalf of the organization, and with any other person whose act or omission in connection with that matter may be imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization. If an agent or employee of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f).

This Rule also covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question.

CODE COMPARISON

This Rule is substantially identical to DR 7-104(A)(1). Premeaux v. Smith, 569 So. 2d 681 (Miss. 1990).

JUDICIAL DECISIONS

Applicability.

In a case in which a retailer moved to dismiss the case or for sanctions against an employee's counsel because the employee's counsel had violated Miss. R. Prof. Conduct 4.2 by having ex parte communications with two former store managers of the retailer without the retailer's counsel's permission, the motion was denied because Rule 4.2 did not apply to former employees. The retailer failed to establish the requisite prong of improper communication, and the motion failed to address the second prong of irreparable prejudice. Durham v. Advance Stores Co., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 72989 (S.D. Miss. Sept. 30, 2007).

RESEARCH REFERENCES

ALR. Right of attorney to conduct ex parte interviews with former corporate employees. 57 A.L.R.5th 633.

Rule 4.3. Dealing with unrepresented person.

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonably possibility of being in conflict with the interests of the client. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. (Amended effective November 3, 2005 to cover giving legal advice to unrepresented persons.)

COMMENT

An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. During the course of a lawyer's representation of a client, the lawyer should not give advice to an unrepresented person other than the advice to obtain counsel.

CODE COMPARISON

There is no direct counterpart to this Rule in the Code. DR 7-104(A)(2) provides that a lawyer shall not "give advice to a person who is not represented by a lawyer, other than the advice to secure counsel...."

See Supplement to MSB Ethics Opinion No. 80.

Rule 4.4. Respect for rights of third persons.

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender. (Amended effective November 3, 2005 to add new subsection (b).)

COMMENT

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the attorney-client relationship.

Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or other lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these rules, as is the question of whether the privileged status of a document has been waived. Similarly, this rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

Some lawyers may choose to return a document unread, for example, when the lawyer learns before receiving the document that it is inadvertently sent to the wrong address. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

[Amended effective November 3, 2005.]

CODE COMPARISON

DR 7-106(C)(2) provides that a lawyer shall not "ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person." DR 7-102(A)(1) provides that a lawyer shall not "take ... action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another." DR 7-108(D) provides that "after discharge of the jury ... the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror ..." DR 7-108(E) provides that "a lawyer shall not conduct ... a vexatious or harassing investigation of either a venireman or a juror." Kouvarakis v. Hawver, 208 Miss. 697, 45 So. 2d 278 (1950); Hughes v. Tupelo Oil Co., 510 So. 2d 502 (Miss. 1987).

JUDICIAL DECISIONS

Sanctions.
— Suspension.
Telephone conversations.

Sanctions.

— Suspension.

Attorney who failed to furnish obvious information to opposing counsel, and who employed deceit and misrepresentation in arranging for arrest of opposing party, merited suspension from practice of law for a period of six months. Mississippi Bar v. Robb, 684 So. 2d 615 (Miss. 1996), cert. denied, 520 U.S. 1117, 117 S. Ct. 1248, 137 L. Ed. 2d 330 (1997).

Telephone conversations.

A physician's right to privacy in his communications did not cover words spoken to an attorney who represented a potentially adverse party; he had no legal right to be free from surreptitious recordings of telephone conversations, as the attorney's purpose was neither criminal nor tortious and was not unduly harassing. Attorney M v. Mississippi Bar, 621 So. 2d 220 (Miss. 1992).

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities of a partner or supervisory lawyer.

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm or has comparable managerial authority in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial

action. (Amended effective November 3, 2005 to include in coverage not only partners but also those in comparable managerial authority.)

COMMENT

Paragraphs (a) and (b) refer to lawyers who have supervisory and/or managerial authority over the professional work of a firm or legal department of a government agency. This includes members of a partnership and, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have immediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

The measures required to fulfill the responsibility prescribed in paragraphs (a) and (b) can depend on the firm's structure and the nature of its practice. In a small firm, informal supervision and occasional admonition ordinarily might be sufficient. In a large firm, or in practice situations in which intensely difficult ethical problems frequently arise, more elaborate procedures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and a lawyer having authority over the work of another may not assume that the subordinate lawyer will inevitably conform to the Rules.

Paragraph (c)(1) expresses a general principle of responsibility for acts of another. See also Rule 8.4(a).

Paragraph (c)(2) defines the duty of a lawyer having direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has such supervisory authority in particular circumstances is a question of fact. Partners of a private firm have at least indirect responsibility for all work being done by the firm, while a partner in charge of a particular matter ordinarily has direct authority over other firm lawyers engaged in the matter. Appropriate remedial action by a partner would depend on the immediacy of the partner's involvement and the seriousness of the misconduct. The supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

[Amended effective November 3, 2005.]

CODE COMPARISON

There is no direct counterpart to this Rule in the Code. DR 1-103(A) provides that "A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to ... authority empowered to investigate or act upon such violation."

Rule 5.2. Responsibilities of a subordinate lawyer.

(a) A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the rules of professional conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

COMMENT

Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

CODE COMPARISON

There is no counterpart to this Rule in the Code.

Rule 5.3. Responsibilities regarding non-lawyer assistants.

With respect to a non-lawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. (Amended effective November 3, 2005 to add scope to include as well as partners, other lawyers possessing managerial authority.)

COMMENT

Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in the rendition of the lawyer's professional services. A lawyer must make reasonable efforts to give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-lawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

[Amended effective November 3, 2005.]

CODE COMPARISON

There is no direct counterpart to this Rule in the Code. DR 4-101(D) provides that "A lawyer shall exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client...." DR 7-107(J) provides that "A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107."

JUDICIAL DECISIONS

Inadequate supervision of paralegal.
Paralegal's prior work for opposing party's prior counsel.

Inadequate supervision of paralegal. With respect to an attorney whose paralegal falsely communicated to a prisoner that the attorney had agreed to work on the prisoner's case, the attorney violated Miss. R. Prof. Conduct 5.3 and 5.5(b) by inadequately supervising the paralegal's work and effectively assisting him in the unauthorized practice of law. Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008).

Paralegal's prior work for opposing party's prior counsel.

Where a paralegal worked for defendant lenders' prior counsel, and then worked for different plaintiff consumers' counsel, and all the consumer fraud cases involved the same lenders, claims and documents, and nearly identical facts, a substantial relationship existed requiring disqualification of plaintiff consumers' counsel under Miss. R. Prof. Conduct 1.6, 1.9(a), and 1.10(b); plaintiff consumers' counsel was on notice of the conflict when it hired the paralegal due to the paralegal informing the firm of her prior employment with the lender's prior counsel, and thus, plaintiff consumers' counsel was required, under Miss. R. Prof. Conduct 5.3(b), to ensure that the paralegal was not allowed access to the consumer fraud case files, which was not done. Owens v. First Family Fin. Servs., 379 F. Supp. 2d 840 (S.D. Miss. 2005).

Rule 5.4. Professional independence of a lawyer.

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of law of a deceased, disabled or disappeared lawyer may pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer. (Amended August 20, 1998.)

COMMENT

The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

CODE COMPARISON

DR 3-102(a) provides that "A lawyer or law firm shall not share legal fees with a nonlawyer ...." DR 3-103(A) provides that "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law." DR 5-107(B) provides that "A lawyer shall not permit a person who recommends, employs, or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services." DR 5-107(C) provides that "A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if: (1) A nonlawyer owns any interests therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; (2) A nonlawyer is a corporate director or officer thereof; or (3) A nonlawyer has the right to direct or control the professional judgment of the lawyer." EC 5-24 states that "A lawyer should not practice with or in the form of a professional legal corporation, even though the corporate form is permitted by law, if any director, officer, or stockholder of it is a nonlawyer. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of his professional judgment from any layman. Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between him and the organization and provides for his independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain his professional independence remains constant ...."

See MSB Ethics Opinions Nos. 25, 32, 33 and 91. Bancroft v. Martin, 144 Miss. 384, 109 So. 859 (1926), error overruled, 144 Miss. 390, 111 So. 434 (1927); 91 A.L.R.3d 382.

JUDICIAL DECISIONS

Construction.
Purpose.
Sanctions.
— Suspension.
Illustrative cases.

Construction.

As an exception to the fee-sharing prohibition, Miss. R. Prof. Conduct 5.4(a)(3) contemplates a compensation or retirement plan that is dependant on a periodic evaluation of the financial health of the law firm. Bolen v. Crowe (In re Holmes), 304 B.R. 292 (Bankr. N.D. Miss. 2004).

Purpose.

Miss. R. Prof. Conduct 5.4 serves to discourage the unauthorized practice of law by lay persons, as well as prevent a nonlawyer from acquiring a pecuniary interest in the disposition of a case that could possibly take preeminence over the client's best interest. Bolen v. Crowe (In re Holmes), 304 B.R. 292 (Bankr. N.D. Miss. 2004).

Sanctions.

— Suspension.

Attorney who used various inethical means to solicit employment was suspended from practice of law for an indefinite period, with reinstatement contingent on successfully passing all sections of Mississippi Bar Examination. Emil v. Mississippi Bar, 690 So. 2d 301 (Miss. 1997).

Illustrative cases.

Where a bankruptcy attorney paid bonuses to his nonlawyer employees when clients paid a retainer, returned their bankruptcy questionnaire, or signed living wills/durable powers of attorney, and failed to disclose the arrangement to the bankruptcy court, the bonuses violated 11 U.S.C.S. § 504(a) and Miss. R. Prof. Conduct 5.4(a), and also violated the disclosure requirements of Fed. R. Bankr. P. 2016(b); the attorney could not avail himself of the exception to the fee-sharing prohibition set forth in Miss. R. Prof. Conduct 5.4(a)(3) because the arrangement conveyed a pecuniary interest to the nonlawyer employee that was directly dependent on a decision that the client was called upon to make. Bolen v. Crowe (In re Holmes), 304 B.R. 292 (Bankr. N.D. Miss. 2004).

The evidence established that an attorney improperly shared a fee with his paralegal, notwithstanding testimony of the attorney and the paralegal denying a sharing of a fee, where the attorney wrote a check to the paralegal representing half of the settlement proceeds of a case on the same day the attorney received his fee for the case. Attorney AAA v. Mississippi Bar, 735 So. 2d 294 (Miss. 1999).

Rule 5.5. Unauthorized practice of law.

A lawyer shall not:

(a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Cross References — Admission and conduct of attorneys, see Mississippi Code of 1972, § 73-3-1 et seq.

Restrictions of certain persons to practice law, see Mississippi Code of 1972, § 73-3-45.

Unlawful to practice law without a license, see Mississippi Code of 1972, § 73-3-55.

COMMENT

The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. Paragraph (b) does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

CODE COMPARISON

With regard to Rule 5.5(a), DR 3-101(B) of the Code provides that "A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

With regard to Rule 5.5(b), DR 3-101(A) of the Code provides that "A lawyer shall not aid a nonlawyer in the unauthorized practice of law."

See MSB Ethics Opinions Nos. 25, 32, 33 and 96. Cates v. Allen, 149 U.S. 451, 13 S. Ct. 883, 37 L. Ed. 804 (1893), superseded by statute on other grounds as stated in Kunkel v. Topmaster Int'l, Inc., 906 F.2d 693 (1990), criticized in In re Bonham, 33 Bankr. Ct. Dec. (CRR) 642 (Bankr. D. Alaska 1998).

JUDICIAL DECISIONS

Assisting nonlawyer in unauthorized practice.
Practice while suspended.

Assisting nonlawyer in unauthorized practice.

Paralegal's email transmitting a fee bill to the trial judge did not amount to the unauthorized practice of law because the attorney wholly failed to show how the paralegal's statement in an email amounted to the practice of law, had anything to do with legal advice, or required any knowledge of law whatsoever. Smith v. Hickman, Goza & Spragins, PLLC, 265 So. 3d 139 (Miss. 2019).

With respect to an attorney whose paralegal falsely communicated to a prisoner that the attorney had agreed to work on the prisoner's case, the attorney violated Miss. R. Prof. Conduct 5.3 and 5.5(b) by inadequately supervising the paralegal's work and effectively assisting him in the unauthorized practice of law. Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008).

Practice while suspended.

Appropriate penalty for practicing law while under an order of suspension is disbarment. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

Rule 5.6. Restrictions on right to practice.

A lawyer shall not participate in offering or making:

(a) a partnership or employment agreement that restricts the rights of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

This Rule does not prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17. (Amended August 20, 1998.)

COMMENT

An agreement restricting the right of partners or associates to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

Paragraph (b) prohibits a lawyer from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

CODE COMPARISON

Rule 5.6 is substantially similar to DR 2-108.

PUBLIC SERVICE

Rule 6.1. Voluntary pro bono public service.

(a) *Professional Responsibility.* Each member of the Mississippi Bar in good standing and not exempt hereunder, as part of the member's professional responsibility, should (1) render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor.

(b) *Discharge of the Professional Responsibility to Provide Pro Bono Legal Services to the Poor.* The professional responsibility to provide pro bono legal services to the poor may be discharged by:

(1) annually providing at least 20 hours of pro bono legal services to the poor, or

(2) annually providing at least 20 hours of pro bono legal services to charitable, religious, civic, community, governmental or educational organizations for the purpose of providing legal counsel and representation to the poor, or

(3) making an annual contribution of at least $200 to the Mississippi Bar, which will be used by the Bar to provide legal services to the poor through legal aid organizations.

(c) *Collective Discharge of the Professional Responsibility to Provide Pro Bono Legal Service to the Poor.* Each member of the bar should strive to individually satisfy the member's professional responsibility to provide pro bono legal service to the poor. Collective satisfaction of this professional responsibility is permitted by law firms only under a collective satisfaction plan that has been previously approved by The Mississippi Bar and only when providing pro bono legal services to the poor

(1) in a major case or matter involving a substantial expenditure of time and resources; or

(2) through a full-time community or public service staff, or

(3) other government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, other regulatory prohibitions, or by employment policies,

(d) *Exemptions.* Those exempt from the provisions of this rule are:

(1) those lawyers who are restricted from practicing law outside their specific employment,

(2) members of the judiciary and their staff,

(3) other government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, other regulatory prohibitions, or by employment policies,

(4) attorneys employed in established Legal Services Programs, and

(5) members of the bar who have acquired inactive or active exempt status or who are suspended.

Nevertheless, exempt attorneys are encouraged to assist in meeting the needs of the poor for legal services to the extent that they can, whether by monetary contributions or otherwise.

(e) *Reporting Requirements.* Each member of the bar shall annually certify whether the member has satisfied the member's professional responsibility to provide pro bono legal services to the poor. Each member shall certify this information through a form that is made a part of the member's annual membership fees statement which shall require the member to report the following information:

(1) the number of hours the attorney dedicated to pro bono legal services,

(2) whether the attorney satisfied the obligation through a collective plan, the name or nature of that plan, and

(3) if the attorney has satisfied the obligation by contribution, the amount of that contribution.

If the attorney has not provided pro bono legal services to the poor in the current year, the form shall so state, and the reason for non-compliance shall be stated. If the attorney is exempt from the obligation to provide pro bono services to the poor, the report shall so state and indicate the nature of the exemption.

(f) *Compliance.* The provisions of Rule 6.1(b) are aspirational goals and an affirmation of professional responsibility, but are not mandatory and do not constitute a basis for discipline under the Rules of Discipline for the Mississippi Bar.

The reporting requirements of Rule 6.1(e) are mandatory and the failure to report this information shall be treated in the same manner as failure to pay dues or comply with mandatory Continuing Legal Education.

The Bar shall from time to time, but at least annually, provide the Supreme Court with statistical data regarding compliance, providing such information in such form as the Chief Justice shall direct.

(g) *Credit Toward Professional Responsibility in Future Years.* In the event that more than 20 hours of pro bono legal service to the poor are provided and reported in any 1 year, the hours in excess of 20 may be carried forward and reported as such for up to 2 succeeding years. (Amended effective September 12, 1996; amended effective March 24, 2005.)

COMMENT

Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. All lawyers are urged to provide a minimum of 20 hours of pro bono services to the poor annually. Pro bono legal service to the poor is an integral and particular part of a lawyer's pro bono public service responsibility. As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal services has become of critical importance. This is true for all people, be they rich, poor, or of moderate means. However, because the legal problems of the poor often involve areas of basic need, their inability to obtain legal services can have dire consequences. The vast unmet legal needs of the poor in Mississippi have been recognized by the Supreme Court of Mississippi. The Supreme Court has further recognized the necessity of finding a solution to the problem of providing the poor greater access to legal service and the unique role of lawyers in our adversarial system of representing and defending persons against the actions and conduct of governmental entities, individuals, and non-governmental entities. As an officer of the court, each member of The Mississippi Bar in good standing has a professional responsibility to provide pro bono legal service to the poor.

Certain lawyers, however, are prohibited from performing legal services outside their employment by constitutional, statutory, rule, or other regulatory prohibitions, or by the policies of their employers. Consequently, members of the judiciary and their staffs, government lawyers who are prohibited from performing legal services by constitutional, statutory, rule, or regulatory prohibitions, members of the bar who are inactive, or suspended are exempt from participation in this program. Those exempt (other than those suspended) and others who, although licensed to do so, do not engage in the practice of law and those who are prevented by their employment from performing legal services for those other than their employers, are, however, encouraged to meet the professional responsibility to render public service to the extent that they can. For definition of "inactive members," see Miss. Code Ann. § 73-3-120(b). These attorneys, should attempt to serve the public good through activities which do not involve pro bono services but promote the public understanding of the legal system. These might include serving, without compensation, in public information and educational programs such as Law Day programs, high school moot court programs, CLE programs and the like.

Attorneys who are employed in Legal Services Programs are specifically exempt, it being recognized that they have chosen to dedicate their entire professional activities to assisting the poor.

In discharging the professional responsibility to provide pro bono legal service to the poor, each lawyer should furnish a minimum of twenty hours of pro bono legal service to the poor annually or contribute $200 to the Mississippi Bar, which will be used by the Bar to provide legal services to indigents through legal aid organizations. "Pro bono legal service" means legal service rendered without charge or expectation of a fee for the lawyer at the time the service commences. Legal services written off as bad debts do not qualify as pro bono service. Most pro bono service should involve civil proceedings where there is no governmental obligation to provide counsel, given that government must provide indigent representation in most criminal matters. Pro bono legal service to the poor is to be provided not only to those persons whose household incomes are below the federal poverty standard but also to those persons society sees as unable to pay for legal services, those frequently referred to as the "working poor." Lawyers providing pro bono legal service on their own need not undertake an investigation to determine client eligibility. Rather, a good faith determination by the lawyer of client eligibility is sufficient. Pro bono legal service to the poor need not be provided only through legal services to individuals; it can also be provided through legal services to charitable, religious, or educational organizations whose overall mission and activities are designed predominantly to address the needs of the poor. For example, legal service to organizations such as a church, civic, or community service organizations relating to a project seeking to address the problems of the poor would qualify. Awards of statutory attorney's fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section.

While the personal involvement of each lawyer in the provision of pro bono legal service to the poor is generally preferable, such personal involvement may not always be possible or produce the ultimate desired result, that is, a significant maximum increase in the quantity and quality of legal service provided to the poor. The annual contribution alternative recognizes a lawyer's professional responsibility to provide financial assistance to increase and improve the delivery of legal service to the poor when a lawyer cannot or decides not to provide legal service to the poor through the contribution of time. Also, there is no prohibition against a lawyer contributing a combination of hours and financial support.

The amount of dollar contribution does not and is not intended to equate with 20 hours of services at the customary hourly rate of private practitioner. It does, however, provide an alternative recognizing that contributions to established legal services organizations can, in some cases, provide a more efficient mechanism for reaching those in need.

The limited provision allowing for collective satisfaction of the 20-hour standard recognizes the importance of encouraging law firms to undertake the pro bono legal representation of the poor in substantial, complex matters requiring significant expenditures of law firm resources and time and costs, and through the establishment of full-time community or public service staffs. When a law firm uses collective satisfaction, the total hours of legal services provided in such substantial, complex matters or through a full-time community or public service staff should be credited among the firm's lawyers in a fair and reasonable manner as determined by the firm.

Neither providing pro bono services nor contributing is mandatory and failure to do so does not result in discipline as a violation of the Rules of Professional Conduct under the Rules of Discipline. However, attorneys are required to comply with the reporting requirements of Rule 6.1(e). The simple reporting requirement of Rule 6.1(e) is designed to provide a sound basis for evaluating the results achieved by this rule, and to remind lawyers of their professional responsibility under this rule. The reporting is designed to be as simple as possible, and does not require itemization of services rendered. Failure to comply with the reporting requirements is handled in the same manner as failure to pay bar dues.

It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation.

[Comment amended September 12, 1996; amended effective March 24, 2005.]

Rule 6.2. Accepting appointments.

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client to likely to result in violation of the rules of professional conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

COMMENT

A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to service unpopular clients or persons unable to afford legal services.

Appointed Counsel. — For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

CODE COMPARISON

There is no counterpart to Rule 6.2 in the Disciplinary Rules of the Code. EC 2-29 states that "When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reason. Compelling reasons do not include such factors as the repugnance of the subject matter of the proceeding, the identity or position of a person involved in the case, the belief of the lawyer that the defendant in a criminal proceeding is guilty, or the belief of the lawyer regarding the merits of the civil case." EC 2-30 states that "a lawyer should decline employment if the intensity of his personal feelings, as distinguished from a community attitude, may impair his effective representation of a prospective client."

Rule 6.3. Membership in legal services organization.

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

COMMENT

Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is an officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

CODE COMPARISON

There is no counterpart to this Rule in the Code.

Rule 6.4. Law reform activities affecting client interests.

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

COMMENT

Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.

CODE COMPARISON

There is no counterpart to this Rule in the Code.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications concerning a lawyer's services.

A lawyer shall not make or permit to be made a false, misleading, deceptive or unfair communication about the lawyer or lawyer's services. A communication violates this rule if it:

(a) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading, or

(b) Creates an unjustified, false or misleading expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these rules or other law; or

(c) states or implies that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or

(d) Compares the lawyer's services with other lawyers' services unless the comparison can be factually substantiated. (Amended effective June 22, 1994; amended February 11, 1999; amended May 20, 1999; amended effective

September 1, 2003; suspended by Order of August 8, 2003, reinstated effective October 1, 2004.)

COMMENT

This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them shall be truthful.

The prohibition in paragraph (b) of statements that create an unjustified expectation of results precludes advertisements about results obtained on behalf of a client, such as the amount of damage verdicts or settlements, that create an unjustified expectation of similar results without reference to the specific factual and legal circumstances.

The prohibition in paragraph (d) discussing comparisons that cannot be factually substantiated would preclude a lawyer from representing that he or she (or his or her law firm) is "the best," "one of the best" or "one of the most experienced" in a particular field of law.

[Amended effective June 22, 1994; amended February 11, 1999; amended effective September 1, 2003, suspended by Order of August 8, 2003, reinstated effective October 1, 2004.]

Rule 7.2. Advertising.

(a) An advertisement is an active quest for clients involving a public or non-public communication. The term "advertisement" includes, but is not limited to, communication by means of telephone, television, radio, motion picture, computer-accessed communication, newspaper, sign, directory, listing or through written communication.

(b) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or range of fees for at least 90 days unless the advertisement specifies a longer period; provided that for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(c) All advertisements and written communications provided for under these rules shall disclose the geographic location by city and state of one or more offices of the lawyer or lawyers whose services are advertised or shall state that additional information about the lawyer or firm can be obtained by contacting the Mississippi Bar at a number designated by the Bar and included in the advertisement.

(d) All advertisements and written communications pursuant to these Rules shall include the name of at least one lawyer or the lawyer referral service responsible for their content. A lawyer shall not advertise services under a name that violates the provisions of Rule 7.7.

(e) No lawyer shall directly or indirectly pay all or a part of the cost of an advertisement by a lawyer not in the same firm unless the advertisement discloses the name and address of the nonadvertising lawyer, the relationship between the advertising lawyer and the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the nonadvertising lawyer.

(f) The following information in advertisements and written communications shall be presumed not to violate the provisions of Rule 7.1:

(1) Subject to the requirements of this Rule and Rule 7.7, the name of the lawyer or law firm, a listing of lawyers associated with the firm, office addresses and telephone numbers, office and telephone service hours, and a designation such as "attorney" or "law firm."

(2) Date of admission to The Mississippi Bar and any other Bars and a listing of federal courts and jurisdictions other than Mississippi where the lawyer is licensed to practice.

(3) Foreign language ability.

(4) Prepaid or group legal service plans in which the lawyer participates.

(5) Acceptance of credit cards.

(6) Fee for initial consultation and fee schedule, subject to the requirements of paragraphs *(b)* of this Rule.

(7) A listing of the name and geographic location by city and state of one or more offices of a lawyer or law firm as a sponsor of a public service announcement or charitable, civic or community program or event.

(g) Nothing in this Rule prohibits the inclusion of the name of a lawyer or law firm in law lists and law directories intended primarily for the use of the legal profession of such information as has traditionally been included in these publications.

(h) A copy or recording of an advertisement or written or recorded communication shall be submitted to the Office of General Counsel of the Mississippi Bar (hereinafter referred to as "OGCMB") in accordance with the provisions of Rule 7.5. The OGCMB shall retain a copy of such advertisement or communication for three (3) years from the date of submission. The lawyer shall retain a copy or recording for three (3) years after its last dissemination along with a record of when and where it was used.

(i) The lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may pay the reasonable cost of advertising or a written or recorded communication permitted by these Rules and may pay the usual charges of a lawyer referral service or to other legal service organization. (Amended effective June 22, 1994; amended August 20, 1998; amended February 11, 1999; amended effective September 1, 2003, suspended by Order of August 8, 2003; amended effective October 1, 2004.)

COMMENT

To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. The public's need to know about legal services can be fulfilled in part through advertising which provides the public with useful, factual information about legal rights and needs and the availability and terms of legal services from a particular lawyer or law firm. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. Nevertheless, certain types of advertising by lawyers create the risk of practices that are misleading or overreaching and can create unwarranted expectations by laymen untrained in the law. Such advertising can also adversely affect the public's confidence and trust in our judicial system. The language in Rule 7.2(a) is reflective of that set forth in the ABA's Model Rules of Professional Conduct.

One developing area of communications to which the rules relating to communications about lawyers' services are intended to apply is computer-accessed communications. For purposes of this rule, "computer-accessed communications" are defined as information regarding a lawyer's or law firm's services that is read, viewed, or heard directly through the use of a computer. Computer-accessed communications include, but are not limited to, Internet presences such as home pages or World Wide Web sites, unsolicited electronic mail communications, and information concerning a lawyer's or law firm's services that appears on World Wide Web search engine screens and elsewhere.

This Rule is included in order to balance the public's need for useful information, the state's need to ensure a system by which justice will be administered fairly and properly, and the state's need to regulate and monitor the advertising practices of lawyers, with a lawyer's right to advertise the availability of the lawyer's services to the public. This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other factual information that might invite the attention of those seeking legal assistance. Rule 7.2(c) requires advertisements to contain a geographic office location because experience in other jurisdictions has shown, in the absence of such a rule, members of the public have been misled into employing an inaccessible lawyer in a distant city or another state. See Rule 7.04(j), Tex. Disciplinary R. Prof. Conduct.

Neither this Rule nor Rule 7.4 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

This Rule applies to advertisements and written communications directed at prospective clients and concerning a lawyer's or law firm's availability to provide legal services. The Rule does not apply to communications between lawyers, including brochures used for recruitment purposes.

Paying others to recommend a lawyer. — A lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay or provide other tangible benefits to another person for procuring professional work. However, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs. Paragraph (g) does not prohibit paying regular compensation to an assistant, such as secretary or advertising consultant, to prepare communications permitted by this Rule. Owen v. Owen, 228 Miss. 534, 88 So. 2d 100 (1956); Federal Reserve Bank v. Sparkman, 140 Miss. 336, 105 So. 637 (1925); Hubbard v. Massey, 192 Miss. 95, 4 So. 2d 230 (1941), error overruled, 192 Miss. 111, 4 So. 2d 494 (1941).

[Amended effective June 22, 1994; amended February 11, 1999; amended May 20, 1999; amended September 1, 2003, suspended by Order of August 8, 2003; amended effective October 1, 2004.]

JUDICIAL DECISIONS

Constitutionality.
Construction.
Sanctions.
— Suspension.

Constitutionality.

Mississippi does not prohibit a lawyer from exercising First Amendment rights of free speech, but State has an interest in protecting the public, and hence can regulate any potentially misleading communication as reasonably necessary. Mississippi Bar v. Attorney R., 649 So. 2d 820 (Miss. 1995), cert. denied, 515 U.S. 1144, 115 S. Ct. 2582, 132 L. Ed. 2d 831 (1995).

Construction.

Rules of Professional Conduct are interpreted from perspective of the reasonable client or, in the case of attorney advertising, the reasonable lay person whom the lawyer is charged with misleading. Mississippi Bar v. Attorney R., 649 So. 2d 820 (Miss. 1995), cert. denied, 515 U.S. 1144, 115 S. Ct. 2582, 132 L. Ed. 2d 831 (1995).

Sanctions.

— Suspension.

Attorney who used various means to unethically solicit employment as an attorney was suspended from practice of law for an indefinite period, with reinstatement contingent on successfully passing all sections of Mississippi Bar Examination. Emil v. Mississippi Bar, 690 So. 2d 301 (Miss. 1997).

RESEARCH REFERENCES

ALR. Propriety of Radio and Television Attorney Advertisements. 20 A.L.R. 6th 385.

Rule 7.3. Direct contact with prospective clients.

(a) A Lawyer shall not by in-person live telephone or real-time electronic contact solicit professional employment from a particular prospective client with whom the lawyer has no family, close personal, or prior professional relationship when a significant motive of the lawyer's doing so is the lawyer's pecuniary gain.

(b) A lawyer shall not solicit professional employment from a particular prospective client by written, recorded or electronic communication or by in-person, telephone real time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) Prospective client has made known to the lawyer the desire not to be solicited by the lawyer or

(2) The solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a particular prospective client known to be in need of legal services in a particular matter, with whom the lawyer has no family, close personal, or prior professional relationship, shall include the words, "solicitation material" on the outside envelope or at the beginning and ending of any recorded communication.

(d) Notwithstanding the prohibitions of paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer which uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. (Amended effective June 22, 1994; amended February 11, 1999; amended effective November 3, 2005.)

COMMENT

There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a particular prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of particular prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or auto-dialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person or telephone persuasion that may overwhelm the client's judgment.

The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 are permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and are not subject to third party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2, the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

The requirement in Rule 7.3(c) that certain communications be marked 'Solicitation Material' does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

Paragraph (d) of this Rule would permit an attorney to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred to in paragraph (d) must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

[Amended effective June 22, 1994; amended February 11, 1999; amended effective November 3, 2005.]

CODE COMPARISON

DR 2-104(A) provided with certain exceptions that "[a] lawyer who has given in-person unsolicited advice to a layperson that he should obtain counsel or take legal action shall not accept employment resulting from that advice . . ." The exceptions include DR 2-104(A)(1), which provided that a lawyer "may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom the lawyer reasonably believes to be a client." DR 2-104(A)(2) through DR 2-104(A)(5) provided other exceptions relating, respectively, to employment resulting from public educational programs, recommendation by a legal assistance organization, public speaking or writing and representing members of a class in class action litigation.

RESEARCH REFERENCES

ALR. Propriety of Radio and Television Attorney Advertisements. 20 A.L.R. 6th 385.

Rule 7.4. Legal service information.

(a) Each lawyer or law firm that advertises his, her or its availability to provide legal services shall have available in written form for delivery to any potential client:

(1) A factual statement detailing the background, training and experience of each lawyer or law firm.

(2) If the lawyer or law firm claims special expertise in the representation of clients in special matters or publicly limits the lawyer's or law firm's practice to special types of cases or clients, the written information shall set forth the factual details of the lawyer's experience, expertise, background, and training in such matters.

Further, any advertisement or written communication shall advise any potential client of the availability of the above information by prominently displaying in all such advertisements and communications the following notice: FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST.

(b) Whenever a potential client shall request information regarding a lawyer or law firm for the purpose of making a decision regarding employment of the lawyer or law firm:

(1) The lawyer or law firm shall promptly furnish (by mail if requested) the written information described in paragraph (a) of this Rule.

(2) The lawyer or law firm may furnish such additional factual information regarding the law firm deemed valuable to assist the client.

(c) A copy of all information furnished to clients by reason of this Rule shall be retained by the lawyer or law firm for a period of five years after the last regular use of the information.

(d) Any factual statement contained in any advertisement or written communication or any information furnished to a prospective client under this Rule shall not:

(1) Be directly or inherently false or misleading;

(2) Be potentially false or misleading;

(3) Fail to disclose material information necessary to prevent the information supplied from being actually or potentially false or misleading;

(4) Be unsubstantiated in fact; or

(5) Be unfair or deceptive.

(e) Upon reasonable request by The Mississippi Bar, a lawyer shall promptly provide proof that any statement or claim made in any advertisement or written communication, as well as the information furnished to a prospective client as authorized or required by these Rules, is in compliance with paragraph (d) above.

(f) A statement and any information furnished to a prospective client, as authorized by paragraph (a) of this Rule, that a lawyer or law firm will represent a client in a particular type of matter, without appropriate qualification, shall be presumed to be misleading if the lawyer reasonably believes that a lawyer or law firm not associated with the originally retained lawyer or law firm will be associated or act as primary counsel in representing the client. In determining whether the statement is misleading in this respect, the history of prior conduct by the lawyer in similar matters may be considered. (Adopted effective June 22, 1994; amended February 11, 1999.)

COMMENT

Consumers and potential clients have a right to receive factual, objective information from lawyers who are advertising their availability to handle legal matters. The Rule provides that potential clients may request such information and be given an opportunity to review that information without being required to come to a lawyer's office to obtain it. Selection of appropriate counsel is based upon a number of factors. However, selection can be enhanced by potential clients having factual information at their disposal for review and comparison.

[Amended February 11, 1999.] Management, Inc. v. Crosby, 186 So. 2d 466 (Miss. 1966); Pittman v. Martin, 208 Miss. 36, 43 So. 2d 668 (1949).

JUDICIAL DECISIONS

Constitutionality.
Construction.

Constitutionality.

Mississippi does not prohibit a lawyer from exercising First Amendment rights of free speech, but state has an interest in protecting public, and hence can regulate any potentially misleading communication as reasonably necessary. Mississippi Bar v. Attorney R., 649 So. 2d 820 (Miss. 1995), cert. denied, 515 U.S. 1144, 115 S. Ct. 2582, 132 L. Ed. 2d 831 (1995).

Construction.

Rules of Professional Conduct are interpreted from perspective of the reasonable client or, in the case of attorney advertising, the reasonable lay person whom the lawyer is charged with misleading. Mississippi Bar v. Attorney R., 649 So. 2d 820 (Miss. 1995), cert. denied, 515 U.S. 1144, 115 S. Ct. 2582, 132 L. Ed. 2d 831 (1995).

Rule 7.5. Submission of advertisements.

(a) *Mandatory submission.* A copy or recording of any advertisement to be published shall be submitted to the Office of the General Counsel of the Mississippi Bar (OGCMB) as set forth in paragraph(c) below prior to its first dissemination.

(b) *Exemptions.* The following are exempt from this submission requirement:

(1) Any advertisement that contains no illustrations and no information other than that set forth in Rules 7.2 and 7.4;

(2) Any telephone directory advertisement;

(3) Notices or announcements that do not solicit clients, but rather state new or changed associations or membership of firms, changed location of offices, the opening of new offices, and similar changes relating to a lawyer or law firm;

(4) Professional business cards or letterhead;

(5) On premises office signage;

(6) Notices and paid listings in law directories addressed primarily to other members of the legal profession;

(7) Advertisements in professional, trade, academic, resource or specialty publications circulated to specific subscribing audiences rather than the general public at large that announce the availability of a lawyer or law firm to practice a particular type of law in many jurisdictions and that are not for the purpose of soliciting clients to commence or join in specific litigation to be performed in Mississippi;

(8) Internet Web pages viewed via a Web browser, in a search initiated by a person without solicitation.

(9) Informative or scholarly writings in professional, trade or academic publications;

(10) A communication mailed only to existing clients, former clients or other lawyers;

(11) Any written communications requested by a prospective client;

(12) Any notices or publications required by law; and

(13) Such other exemptions as may be authorized by the OGCMB.

(c) *Items to be submitted.* A submission to the OGCMB pursuant to paragraph (a) shall consist of:

(1) A copy of the advertisement or communication in the form or forms in which it is to be disseminated (e.g., videotapes, audiotapes, print media, photographs or other accurate replicas of outdoor advertising);

(2) A transcript, if the advertisement or communication is on videotape or audiotape;

(3) A statement of when and where the advertisement has been, is, or will be used; and

(4) A fee of twenty-five dollars ($25) per submission of advertisement or communication timely filed as provided in paragraph (a), or a fee of one hundred and fifty dollars ($150) for submissions not timely filed, made payable to The Mississippi Bar. This fee shall be used only for administration and enforcement of these Rules. A "submission of advertisement" is defined as each advertisement unless the same advertisement is to be republished in print or electronic media utilizing the same script. An advertisement does not need to be resubmitted upon each dissemination so long as no changes to form or content are made following the previous submission.

(d) *Optional advisory opinion.* A lawyer may request an advisory opinion concerning the compliance of a contemplated advertisement or communication with these Rules in advance of disseminating the advertisement or communication by submitting the advertisement or communication and fee specified in paragraph (1) below to the OGCMB at least forty-five days prior to such dissemination. The OGCMB shall, upon receipt of such request, evaluate all advertisements and communications submitted to it pursuant to this Rule for compliance with the applicable requirements set forth in this Rule. If an evaluation is requested, the OGCMB shall render its advisory opinion within forty-five days of receipt of a request unless the OGCMB determines that there is reasonable doubt that the advertisement or communication is in compliance with the Rules and that further examination is warranted but such evaluation cannot be completed within the forty-five day time period, and so advise the filing lawyer within the forty-five day time period. In the latter event, the OGCMB shall complete its review as promptly as the circumstances reasonably allow. If the OGCMB does not send any correspondence or notice to the lawyer within forty-five days, the advertisement or communication will be deemed approved.

(1) *Items to be submitted to obtain advisory opinion.* A submission to OGCMB to obtain an advisory opinion pursuant to paragraph (d) shall consist of the same items as (c)(1)(2)(3) above, and an additional fee of fifty dollars ($50) per submission of advertisement or communication made payable to The Mississippi Bar. This fee shall be used only for the purposes of evaluation

and/or review of advertisements and preparing the Advisory Opinion. A "submission of advertisement" is defined as each advertisement unless the same advertisement is to be republished in print or electronic media utilizing the same script.

(2) *Use of finding.* A finding by the OGCMB of either compliance or noncompliance shall not be binding in disciplinary proceedings, but may be offered as evidence.

(3) *Change of circumstances.* If a change of circumstances occurring subsequent to the OGCMB's evaluation of an advertisement or communication raises a substantial possibility that the advertisement or communication has become false or misleading as a result of the change in circumstances, the lawyer shall promptly resubmit the advertisement or a modified advertisement with the OGCMB along with an explanation of the change in circumstances and a fee of twenty dollars ($20) per "submission of advertisement or communication."

(e) *Substantiation.* If requested to do so by the OGCMB, the requesting lawyer shall submit information to substantiate representations made or implied in that lawyer's advertisement or communication.

(f) *Non-compliance.* When the OGCMB determines that an advertisement or communication is not in compliance with the applicable Rules, the OGCMB shall advise the lawyer that dissemination or continued dissemination of the advertisement or communication may result in professional discipline.

(g) *Policies and procedures.* The Mississippi Bar shall formulate the necessary policies and procedures to implement and enforce the provisions of this Rule and submit same to the Supreme Court for approval pursuant to Rule 3 of the Mississippi Rules of Discipline. (Adopted effective June 22, 1994; amended February 5, 1999; amended effective September 1, 2003, suspended by Order of August 8, 2003; amended effective October 1, 2004.)

COMMENT

This Rule has a dual purpose: to enhance the Court's and the bar's ability to monitor advertising practices for the protection of the public and to assist members of the Bar to conform their advertisements to the requirements of these Rules. This Rule requires lawyers to submit their advertisements and other communications and gives them the opportunity to obtain an advisory opinion. In such event, the OGCMB will advise the filing lawyer in writing whether the advertisement appears to comply with the Rules. The OGCMB's opinion will be advisory only, but may be considered as evidence of a good faith effort to comply with these Rules. A lawyer who wishes to be able to rely on the OGCMB's opinion as demonstrating the lawyer's good faith effort to comply with these Rules has the responsibility of supplying the OGCMB with all information material for a determination of whether an advertisement or communication is false or misleading.

[Comment amended February 11, 1999; amended effective September 1, 2003, suspended by Order of August 8, 2003; amended effective October 1, 2004.]

JUDICIAL DECISIONS

Advertisements.

State supreme court denied a petition that would have suspended fees that attorneys are required to pay under Miss. R. Prof. Conduct 7.5 as the court found that granting the petition was not likely to serve the intended purpose of providing aid to attorneys and their clients. In re Rules of Prof'l Conduct, — So. 2d —, 2005 Miss. LEXIS 663 (Miss. Sept. 30, 2005).

Rule 7.6. Communication of certification or designation.

(a) A lawyer may communicate the fact that he or she has been certified or designated in a field of law by a named organization or authority, but only if that certification or designation is granted by an organization or authority whose specialty certification or designation program is accredited by the American Bar Association. Notwithstanding the provisions of this Rule, a lawyer may communicate the fact that he is certified or designated in a particular field of law by a named, non-American Bar Association organization or authority, but must disclose such fact and further disclose that there is no procedure in Mississippi for approving certifying or designating organizations and authorities.

(b) Notwithstanding the provisions of Rule 7.6(a), a lawyer may state or imply as follows:

1. A lawyer who is admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "patent attorney" or a substantially similar designation; or

2. A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation. (Former Rule 7.4 amended and renumbered effective June 22, 1994; amended February 11, 1999.)

COMMENT

Rule 7.6(a) permits a lawyer to communicate that a lawyer has been certified or designated as a specialist in a field of law when the American Bar Association has accredited the organization's or authority's specialty program to grant such certification or designation. Certification or designation procedures imply that an objective entity has recognized a lawyer's higher degree of specialized ability than is suggested by general licensure to practice law. Those objective entities may be expected to apply standards of competence, experience and knowledge to ensure that the lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that the consumers can obtain access to useful certification or designation information, the name of the certifying or designating organization or other agency must be included in any communication regarding the certification or designation. See *Peel v. Attorney Registration & Disciplinary Com.*, 496 U.S. 91 110 S. Ct. 2281, 210 L. Ed. 2d 83 (1990).

However, even though this Rule permits a lawyer to communicate that a lawyer has been certified or designated as a specialist in the field of law when the American Bar Association has accredited the organization's or authority's specialty program, a lawyer may communicate the fact that he is certified or designated in a field of law by a named, non-American Bar Association accredited organization or authority, provided such fact is disclosed and further disclosure is made that there is no procedure in Mississippi for approving certifying or designating organizations and authorities.

Recognition of specialization in patent matters is a matter of law and established policy of the Patent and Trademark Office, as reflected in Rule 7.6(b)(1).

Rule 7.6(b)(2) recognizes that the designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[Amended effective June 22, 1994; amended February 11, 1999.]

Rule 7.7. Firm names and letterheads.

(a) A lawyer shall not use a firm name, letterhead, or other professional designation that violates Rule 7.1.

(b) A lawyer shall not practice under a trade or fictitious name or a name that is misleading as to the identity of the lawyer or lawyers practicing under such name. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the legal community for those services.

(c) A law firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(d) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm except as permitted by Rule 1.17.

(e) Lawyers may state or imply that they practice in a partnership or to other organization only when that is the fact except as permitted by Rule 1.17. (Former Rule 7.5 amended and renumbered effective June 22, 1994; amended August 20, 1998; amended February 11, 1999.)

COMMENT

A firm may be designated by the names of all or some of its members, or by the names of deceased members where there has been a continuing succession in the firm's identity. The United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

Paragraph (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Two examples of such terms are "academy" and "institute". Paragraph (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. Although not prohibited per se, the terms "legal clinic" and "legal services" would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the legal community for like services.

With regard to paragraph (c), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, "Smith and Jones", for that title suggests partnership in the practice of law.

[Amended effective June 22, 1994; amended February 11, 1999.]

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar admission and disciplinary matters.

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Cross References — Admission and conduct of attorneys, see Mississippi Code of 1972, see § 73-3-1 et seq.

Procedures to discipline and to determine personal incapacity to practice law, see Mississippi Code of 1972, § 73-3-301 et seq.

COMMENT

The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. This Rule also requires affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and Article 3, Section 26 of the Mississippi Constitution. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship.

CODE COMPARISON

DR 1-101(A) provides that "A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar." DR 1-101(B) provides that "A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute." With respect to paragraph (b) of Rule 8.1, DR 1-102(A)(5) provides that "A lawyer shall not ... Engage in conduct that is prejudicial to the administration of justice." 30 A.L.R.4th 9.

JUDICIAL DECISIONS

Disciplinary matters.
Sanction.
— Disbarment.

Disciplinary matters.

Attorney had violated Miss. R. Prof. Conduct 8.1(b) where the Mississippi Bar had informed him that a response to the Bar's complaint had to be in writing, but he failed to provide a written response. Crosby v. Miss. Bar, 268 So. 3d 520 (Miss. 2018).

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Client retained an attorney in a wrongful death action after her husband was shot and killed in the presence of a police officer and the case was dismissed due to the attorney's neglect or failure to comply with proper procedure. The attorney failed to cooperate in the investigation, his disciplinary record consisted of eight informal reprimands, three private reprimands, a suspension by a federal court, and the Mississippi State Bar Complaint Tribunal found the only mitigating circumstances offered by the attorney were that he had a very busy law practice and that his membership in the Mississippi State Senate took up much of his time; the Mississippi Supreme Court held that only a public reprimand was necessary, and rejected the Bar's argument that a lengthy suspension was called for. Miss. Bar v. Walls, 890 So. 2d 875 (Miss. 2004).

Attorney's unprofessional and unethical conduct, together with extensive record of disciplinary sanctions for similar conduct, warranted imposition of public reprimand, unconditional suspension from practice of law in state courts for one year, and requirement that attorney pass all sections of bar exam before filing petition for reinstatement. Mississippi Bar v. Alexander, 697 So. 2d 1164 (Miss. 1997).

Sanction.

In a case in which respondent, a paralegal awaiting her Mississippi Bar Examination results and admission to the Bar, forged an order, respondent was suspended from the practice of law for three years because, as a Bar applicant, respondent was subject to this rule, and she violated this rule by failing to supplement her Bar application to reflect her misconduct of forging the order, and by creating a misapprehension about her character and fitness to practice law; and a suspension, not a private reprimand, was the appropriate sanction as, inter alia, respondent's failure to disclose her misconduct impeded the work of the Board of Bar Admissions by denying it adequate information to evaluate her character and fitness to practice law. Miss. Bar v. Johnson, — So. 3d —, 2019 Miss. LEXIS 188 (Miss. May 9, 2019).

Attorney's claim that a 90-day suspension of his license to practice law was too harsh was not only rejected by the court, but the court found that the 90-day suspension recommended by the Complaint Tribunal was too lenient given the attorney's history of five prior violations of Miss. R. Prof. Conduct 8.1(b), and concluded that a one-year suspension was more appropriate. Stewart v. Miss. Bar, 969 So. 2d 6 (Miss. 2007).

Where the evidence showed that an attorney took money from a client for a real estate matter, but did not file a complaint or maintain contact with the client, it was established that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 8.1(a), 8.4(a), (c); a three-year suspension was imposed based on the fact that the attorney had been suspended twice before for violations of these same rules, but disbarment was not appropriate. Shah v. Miss. Bar, 962 So. 2d 514 (Miss. 2007).

— Disbarment.

Attorney was disbarred for violating Miss. R. Prof. Conduct 1.2(a), 1.3,1.4, 1.5(a), 8.1(b), and 8.4(a) and (d) where, inter alia, he caused serious injury to his client by knowingly failing to file a timely appeal from a conviction, deceiving the client as to the status of the appeal, taking the client's money, failing to inform the client of his suspension. The attorney deliberately prevaricated and lacked candor during the disciplinary proceedings and in the motion for out-of-time appeal, the attorney deceived the court by implying that another attorney, and not he, had failed to perfect timely an appeal. Shah v. Miss. Bar, 919 So. 2d 59 (Miss. 2005).

RESEARCH REFERENCES

ALR. Disciplining Attorney for Abuse or Misuse of Computer Technology, Including Internet and E-Mail Activities. 46 A.L.R.6th 365.

Rule 8.2. Judicial and legal officials.

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicating officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

COMMENT

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

CODE COMPARISON

With regard to Rule 8.2(a), DR 8-102(A) provides that "A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office." DR 8-102(B) provides that "A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

There is no counterpart to Rule 8.2(b) in the Code.

See MSB Ethics Opinion No. 36.

JUDICIAL DECISIONS

Sanctions.
— Public reprimand.
— Suspension.

Sanctions.

— Public reprimand.

Attorney was sanctioned for making a statement about a judge's election contributions during a motion to recuse because the attorney violated Miss. R. Prof. Conduct 3.3 and Miss. R. Prof. Conduct 8.2 by knowingly repeating remarks that had been proven to be false. Welsh v. Mounger, 912 So. 2d 823 (Miss. 2005).

— Suspension.

Attorney was suspended, partially due to prior similar conduct, for violating Miss. R. Prof. Conduct 3.5, 8.4, 8.2 where the evidence showed that the attorney made disparaging remarks to a judge relating to "paying for justice" and later told a newspaper reporter that the judge a barbarian; the statements were not protected by the First Amendment because a reasonable person would not have acted in the same manner. Miss. Bar v. Lumumba, 912 So. 2d 871 (Miss. 2005), writ of certiorari denied by 546 U.S. 825, 126 S. Ct. 363, 163 L. Ed. 2d 70, 2005 U.S. LEXIS 6085, 74 U.S.L.W. 3202 (2005).

RESEARCH REFERENCES

Practice References. Geyh, Alfini, Lubet, and Shaman,, Judicial Conduct and Ethics, Fifth Edition (Michie).

Rule 8.3. Reporting professional misconduct.

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority. (Amended June 23, 1994.)

COMMENT

Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship.

[Amended June 23, 1994.]

CODE COMPARISON

DR 1-103(A) provides that "A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to ... authority empowered to investigate or act upon such violation." Mississippi Cent. R.R. v. Hardy, 88 Miss. 732, 41 So. 505 (1906).

JUDICIAL DECISIONS

Standard of knowledge.

Standard of knowledge required to trigger obligation to report another lawyer's misconduct must be an objective one, not tied to subjective beliefs of the lawyer in question; supporting evidence must be such that a reasonable lawyer under the circumstances would have formed a firm opinion that conduct in question had more likely than not occurred and that the conduct, if it did occur, raises a substantial question as to the purported offender's honesty, trustworthiness or fitness to practice law. Attorney U v. Mississippi Bar, 678 So. 2d 963 (Miss. 1996).

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. (Amended effective November 3, 2005 to add new subsection (e).)

COMMENT

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

CODE COMPARISON

With regard to Rule 8.4(a)-(d) DR 1-102(A) provides that "A lawyer shall not:

"(1) Violate a Disciplinary Rule.

"(2) Circumvent a Disciplinary Rule through actions of another.

"(3) Engage in illegal conduct involving moral turpitude.

"(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

"(5) Engage in conduct that is prejudicial to the administration of justice.

"(6) Engage in any other conduct that adversely reflects on his fitness to practice law."

Rule 8.4(e) is substantially similar to DR 9-101(C).

There is no direct counterpart to Rule 8.4(f) in the Disciplinary Rules of the Code. EC 7-34 states in part that "A lawyer ... is never justified in making a gift or a loan to a judge, a hearing officer, or an official or employee of a tribunal." EC 9-1 states that "A lawyer should promote public confidence in our legal system and in the legal profession."

See MSB Ethics Opinions Nos. 22, 38 and 75. Mattox v. McGough, 222 So. 2d 673 (Miss. 1969); Tigner v. McGehee, 60 Miss. 242 (1882); Edmonds v. Delta Democrat Pub. Co., 221 Miss. 785, 75 So. 2d 73 (1954); 94 A.L.R.3d 676; William Iselin & Co. v. Delta Auction & Real Estate Co., 433 So. 2d 911 (Miss. 1983); Barber v. Manier, 71 Miss. 725, 15 So. 890 (1894); Magruder v. Hattiesburg Trust & Banking Co., 108 Miss. 857, 67 So. 485 (1915); People's Bank in Liquidation v. Pennington, 137 Miss. 653, 102 So. 386 (1925), modified on suggestion of error, 137 Miss. 653, 103 So. 144 (1925); Cates v. Allen, 149 U.S. 451, 13 S. Ct. 883, 37 L. Ed. 804 (1893), superseded by statute on other grounds as stated in Kunkel v. Topmaster Int'l, Inc., 906 F.2d 693 (1990), criticized in In re Bonham, 33 Bankr. Ct. Dec. (CRR) 642 (Bankr. D. Alaska 1998); Yazoo & Miss. V. Ry. v. Carroll, 103 Miss. 830, 60 So. 1013 (1913); McDowell v. State, 251 Miss. 156, 168 So. 2d 658 (1964); Magnolia Miss. Dress Co. v. Zorn, 204 Miss. 1, 36 So. 2d 795 (1948); Richmond v. Lamb, 390 So. 2d 1003 (Miss. 1980); 43 A.L.R.4th 1157; 92 A.L.R.3d 797; 16 A.L.R.4th 589; Moser v. Hand, 81 F.2d 522 (5th Cir. 1936).

JUDICIAL DECISIONS

Construction.
Advertising.
Candor towards tribunal.
Diligence.
Dishonesty or fraud.
Failure to file tax returns.
Fairness to opposing counsel.
General misconduct.
Misconduct not found.
No violation.
Suspension.
Telephone conversations.

Violations.

Construction.

Subsections (a), (b), and (c) are not void for vagueness; they are sufficiently clear as to their meaning and application so as to instruct those of ordinary intelligence, within the profession, on how to pattern their actions in accordance with the rules. Rogers v. Mississippi Bar, 731 So. 2d 1158 (Miss. 1999).

Advertising.

Attorney who used various means to unethically solicit employment as an attorney was suspended from practice of law for an indefinite period, with reinstatement contingent on successfully passing all sections of Mississippi Bar Examination. Emil v. Mississippi Bar, 690 So. 2d 301 (Miss. 1997).

Candor towards tribunal.

Attorney was disbarred for violating Miss. R. Prof. Conduct 1.2(a), 1.3,1.4, 1.5(a), 8.1(b), and 8.4(a) and (d) where, inter alia, he caused serious injury to his client by knowingly failing to file a timely appeal from a conviction, deceiving the client as to the status of the appeal, taking the client's money, failing to inform the client of his suspension. The attorney deliberately prevaricated and lacked candor during the disciplinary proceedings and in the motion for out-of-time appeal, the attorney deceived the court by implying that another attorney, and not he, had failed to perfect timely an appeal. Shah v. Miss. Bar, 919 So. 2d 59 (Miss. 2005).

Attorney who forged client's signature on motion, and then deliberately deceived court regarding authenticity of the signature, was suspended from practice of law for one hundred eighty days. Goodsell v. Mississippi Bar, 667 So. 2d 7 (Miss. 1996).

Attorney's knowing misrepresentations to court and opposing counsel that no autopsy had been performed on deceased's body were in violation of this rule and were prejudicial to the administration of justice. Mississippi Bar v. Mathis, 620 So. 2d 1213 (Miss. 1993).

Diligence.

Attorney who failed to prosecute appeal and failed to communicate with client was suspended from practice of law for a period of six months. Terrell v. Mississippi Bar, 662 So. 2d 586 (Miss. 1995).

Attorney who accepted compensation from bankruptcy clients without first petitioning court for approval, and who failed to tender payment to bankruptcy trustee within ninety days after signing court order agreeing to do so, was suspended from practice of law for six months. Mathes v. Mississippi Bar, 637 So. 2d 840 (Miss. 1994).

Dishonesty or fraud.

Attorney's conduct constituted a violation of the ethical rules because the attorney knowingly and willfully filed a bankruptcy petition on another individual's behalf despite a lack of authority to do so, and then forged that individual's signature on various documents presented to the bankruptcy court; the egregiousness of the attorney's actions, combined with his history of ethical violations warranted disbarment. Miss. Bar v. Labovitz, 226 So. 3d 92 (Miss. 2016).

An attorney was properly disbarred, rather than suspended where he represented a client in a personal injury action that was eventually settled, deducted both his fee and the client's medical bills from the settlement and disbursed the rest to the client, and then failed to pay the medical bills. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

Disbarment was the appropriate sanction for an attorney's misuse of client funds since no significant mitigating factors weighed in his favor, notwithstanding that he had not previously been disciplined, that he eventually made restitution to all parties involved, and that he made no attempt to mislead the bar or the court, as the attorney's fitness to practice law became questionable once he converted his client's funds for his own use and made no attempt to defend himself once the bar filed a formal complaint, which raised additional concerns regarding his fitness to practice law. Cotton v. The Mississippi Bar, 809 So. 2d 582 (Miss. 2000).

An attorney violated subsection (c) by converting funds which belonged to his law firm where he performed legal services after hours and thereby appropriated business opportunities that belonged to the firm; such actions did not violate subsection (d) since it was not related to a judicial proceeding. Rogers v. Mississippi Bar, 731 So. 2d 1158 (Miss. 1999).

Where attorney engaged to file complaint to remove cloud on title never filed an actual complaint, but instead forged clerk's signature, obtained court's stamp and rolled date back, and then stamped alleged complaint as filed, attorney was suspended from practice of law for eighteen months. Asher v. Mississippi Bar, 661 So. 2d 722 (Miss. 1995).

Disbarment was warranted for attorney's repeated acts, some while under suspension, of taking money from clients, promising to act as their counsel, and, through deceit, doing nothing. Carter v. Mississippi Bar, 654 So. 2d 505 (Miss. 1995).

Three-year suspension was reversed and disbarment ordered, for attorney who misled his client, misrepresented to court that his client had agreed to terms which she in fact had not agreed to, and presented a document to the court containing a signature which was not his client's. Culpepper v. Mississippi State Bar, 588 So. 2d 413 (Miss. 1991).

Failure to file tax returns.

Attorney violated Miss. R. Prof. Conduct 8.4(b), because even though the attorney had no intent to defraud the government, the attorney's procrastination in failing to file federal income tax returns could not be characterized as anything but willful. Byrd v. The Miss. Bar, 826 So. 2d 1249 (Miss. 2002).

Fairness to opposing counsel.

An attorney's conduct violated the "notions of fair play" and was conduct prejudicial to the administration of justice as contemplated under the rule where he communicated with a magistrate to the Supreme Court to confirm that there was no motion pending before the court with regard to a matter and then acted on that knowledge without divulging his contact with the magistrate. Mississippi Bar v. Logan, 726 So. 2d 170 (Miss. 1998).

Attorney who failed to furnish obvious information to opposing counsel, and who employed deceit and misrepresentation in arranging for arrest of opposing party, merited suspension from practice of law for a period of six months. Mississippi Bar v. Robb, 684 So. 2d 615 (Miss. 1996), cert. denied, 520 U.S. 1117, 117 S. Ct. 1248, 137 L. Ed. 2d 330 (1997).

Where attorney responded to interrogatories without revealing incident relevant to causation of injury in suit against his client, his actions went far beyond what could be considered a discovery dispute, and amounted to conduct involving dishonesty, deceit, misrepresentation, obstructing another party's access to evidence, conduct prejudicial to administration of justice, and both failure to disclose a material fact and making a false statement of material fact to a tribunal. Mississippi Bar v. Land, 653 So. 2d 899 (Miss. 1994).

General misconduct.

Attorney whose paralegal falsely communicated to a prisoner that the attorney had agreed to work on the prisoner's case violated Miss. R. Prof. Conduct 8.4 because the attorney's conduct was prejudicial to the administration of justice, as the prisoner was deprived of his right to file a habeas corpus petition and paid for nonexistent representation. Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008).

Attorney's unprofessional and unethical conduct, together with extensive record of disciplinary sanctions for similar conduct, warranted imposition of public reprimand, unconditional suspension from practice of law in state courts for one year, and requirement that attorney pass all sections of bar exam before filing petition for reinstatement. Mississippi Bar v. Alexander, 697 So. 2d 1164 (Miss. 1997).

Misconduct not found.

In a prosecution for statutory rape, there was no professional misconduct by the prosecutor in his opening statement concerning DNA where the defense first raised the subject of DNA, mentioning it in his opening statement and in cross-examination. Richardson v. State, 767 So. 2d 195 (Miss. 2000).

Decision of bar complaint tribunal imposing public reprimand was reversed and the complaint dismissed, where Bar failed to meet burden of showing that attorney's actions in settling client's case constituted professional misconduct; at best, evidence revealed a miscommunication between attorney and his client. Attorney W.L. v. Mississippi Bar, 621 So. 2d 235 (Miss. 1993).

No violation.

Failure by an attorney to file income tax returns is no "conduct prejudicial to the administration of justice" under Miss. R. Prof. Conduct 8.4(d) where the misconduct does not bear directly upon any decision or the decision-making process of any tribunal. Byrd v. The Miss. Bar, 826 So. 2d 1249 (Miss. 2002).

Suspension.

Six-month suspension was an appropriate sanction to punish an attorney for his misconduct because his acts of depositing a retainer check into his operating account, rather than his trust account and commingling his own funds with client funds in his trust account appeared to be largely the result of negligence and inattentiveness and did not rise to the level of ill intent; the attorney had no prior disciplinary history, and he did not lie to his clients or to disciplinary authorities. Miss. Bar v. Ogletree, 226 So. 3d 79 (Miss. 2015).

Telephone conversations.

Although attorney was acting to protect his client's interests in surreptitiously taping telephone conversations with judge and police chief, attorney violated this rule when he blatantly denied, when asked, that he was taping the conversations. Mississippi Bar v. Attorney ST, 621 So. 2d 229 (Miss. 1993).

Attorney's surreptitious recording of conversation with potential party opponent did not violate this rule, as it did not suggest dishonesty, fraud, deceit, or misrepresentation, and information attorney sought to record was of the type that one might reasonably expect to be taken down for future use. Attorney M v. Mississippi Bar, 621 So. 2d 220 (Miss. 1992).

Violations.

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Attorney was suspended, partially due to prior similar conduct, for violating Miss. R. Prof. Conduct 3.5, 8.4, 8.2 where the evidence showed that the attorney made disparaging remarks to a judge relating to "paying for justice" and later told a newspaper reporter that the judge a barbarian; the statements were not protected by the First Amendment because a reasonable person would not have acted in the same manner. Miss. Bar v. Lumumba, 912 So. 2d 871 (Miss. 2005), writ of certiorari denied by 546 U.S. 825, 126 S. Ct. 363, 163 L. Ed. 2d 70, 2005 U.S. LEXIS 6085, 74 U.S.L.W. 3202 (2005).

Where the evidence showed that an attorney took money from a client for a real estate matter, but did not file a complaint or maintain contact with the client, it was established that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 8.1(a), 8.4(a), (c); a three-year suspension was imposed based on the fact that the attorney had been suspended twice before for violations of these same rules, but disbarment was not appropriate. Shah v. Miss. Bar, 962 So. 2d 514 (Miss. 2007).

Attorney's failure to file income tax returns is a violation of Miss. R. Prof. Conduct 8.4(b). Byrd v. The Miss. Bar, 826 So. 2d 1249 (Miss. 2002).

RESEARCH REFERENCES

ALR. Attorney's Charging Excessive Fee as Ground for Disciplinary Action - Criminal, Tort, and Real Property Matters. 25 A.L.R. 6th 1.

Attorney's Charging Excessive Fee as Ground for Disciplinary Action - Estate, Trust, Domestic Relations, and Family Law Matters. 26 A.L.R. 6th 1.

Attorney's Charging Excessive Fee as Ground for Disciplinary Action - Business and Tax, Employee Benefits and Termination, Civil Rights, and Other Limited Civil Matters. 27 A.L.R. 6th 1.

Disciplining Attorney for Abuse or Misuse of Computer Technology, Including Internet and E-Mail Activities. 46 A.L.R.6th 365.

Rule 8.5. Jurisdiction.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer advertises, provides or offers to provide any legal services to be performed in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. (Amended effective September 1, 2003, suspended by Order of August 8, 2003, reinstated effective October 1, 2004.)

COMMENT

In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute practice of law in that jurisdiction. See Rule 5.5. It is settled law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. Nothing in this rule shall be construed to allow an unlicensed individual to engage in the practice of law in Mississippi contrary to any other rule or statute. See also Mississippi Rules of Discipline 1(1.1) and 16. The language in Rule 8.5 is reflective of that set forth in the ABA's Model Rules of Professional Conduct. The scope of Rule 8.5 is not intended to extend to advertisements such as those reference in Rule 7.5(b)(7), unless they are for the purpose of soliciting clients to commence or join in litigation to be performed in Mississippi.

If the rules of professional conduct in the two jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than one jurisdiction.

Where the lawyer is licensed to practice law in two jurisdictions which impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal, where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

[Amended effective September 1, 2003, suspended by Order of August 8, 2003, reinstated effective October 1, 2004.]

CODE COMPARISON

There is no counterpart to this Rule in the Code.

RESEARCH REFERENCES

ALR. Reciprocal Discipline of Attorneys — Commingling or Other Mishandling of Client Funds. 45 A.L.R.6th 175.

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RULES OF DISCIPLINE FOR THE MISSISSIPPI STATE BAR

Effective January 1, 1984
Amended effective January 8, 2015

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PART ONE. RULES OF DISCIPLINE

GROUNDS FOR DISCIPLINE

The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege of practicing law. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office or the Code of Professional Responsibility as now set forth or as hereafter amended, shall constitute misconduct and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship.

Rule 1. Jurisdiction.

(a) The Supreme Court of Mississippi (the Court) has exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys, and hereafter such proceedings shall be conducted in accordance with these rules. The court shall be the ultimate judge of matters arising under these rules, and from time to time the Court shall review these rules and amend them when necessary or desirable.

(b) Nothing contained in these rules shall be construed to deny to any other court such powers as may be necessary for that court to maintain control over practice and proceedings conducted before it; such as the power of contempt, nor to prohibit local bar associations from censuring, suspending, or expelling their members from membership in such local bar associations.

(c) Actions by other courts or by local bar associations are cumulative and in addition to the disciplinary jurisdiction of the Supreme Court of Mississippi and its disciplinary agencies. Actions by other courts and local bar associations shall not be binding or conclusive as to the Court or the Mississippi State Bar (the Bar), and any action taken by them shall be reported to the Bar, and when required by rule or by statute, to the Court.

(d) Nothing herein shall be construed to affect or limit the Court's power to regulate admission to the practice of law.

Procedure

(1.1) The jurisdiction of the Court shall extend to any resident or nonresident attorney who practices law or renders legal services in the State of Mississippi. Any nonresident, by rendition of legal services in this state, shall be deemed to have appointed the Executive Director of the Bar as his agent for service of process or any notice required by these rules.

Cross References — Disciplinary jurisdiction, see Mississippi Code of 1972, § 73-3-301.

Disciplinary agencies of court, see Mississippi Code of 1972, § 73-3-303.

JUDICIAL DECISIONS

Construction.
Applicability.
Contempt powers.
Inherent power of Supreme Court.
Review.

Construction.

Fact that Bar did not raise issue of attorney's punishment at hearing stage did not mean it was estopped from doing so on appeal, since Rules of Discipline superseded all other rules or statutes pertaining to attorney discipline, and supreme court had power to render any order it deemed appropriate. Mississippi State Bar v. Blackmon, 600 So. 2d 166 (Miss. 1992).

Applicability.

Effect of supreme court's assertion of exclusive and inherent jurisdiction over matters pertaining to attorney discipline, and its promulgation of the Rules of Discipline for the Mississippi State Bar, is that any statute must yield to a contradictory Rule of Discipline. Mississippi Bar v. McGuire, 647 So. 2d 706 (Miss. 1994).

Mississippi State Bar rules of discipline contain no provisions concerning default judgments, and therefore Rules of Civil Procedure concerning default judgments apply to disciplinary proceedings. Harrison v. Mississippi Bar, 637 So. 2d 204 (Miss. 1994).

Bar disciplinary matters are governed first and foremost by Rules of Discipline for Mississippi State Bar, subject only to Constitutions of State of Mississippi and of United States; to the extent they are not inconsistent with Rules of Discipline, Mississippi Rules of Civil Procedure are to govern bar disciplinary matters, and where there is conflict between a provision of Rules of Discipline and a provision of Civil Rules, Rules of Discipline shall control. Mississippi State Bar v. Attorney L., 511 So. 2d 119 (Miss. 1987).

Contempt powers.

When supreme court found attorney in contempt of court, it was not exercising its disciplinary jurisdiction as that was delegated to disciplinary agencies, but was exercising inherent authority to enforce its rules of procedure under its rule-making power, and nothing in the Rules of Discipline was to be construed to deny the court that power. Attorney BT v. Mississippi Bar, 589 So. 2d 119 (Miss. 1991).

Inherent power of Supreme Court.

Circuit court exceeded its authority in sanctioning an attorney and entering a judgment in favor of a client because when the circuit court sanctioned the attorney, it was not to regulate its proceedings, but as a punishment for violating a rule of discipline (the attorney's "obstinate and unreasonable refusal to provide an itemized statement" and "abusive litigation practice"), and the Supreme Court of Mississippi was vested with the exclusive and inherent jurisdiction over matters pertaining to attorney discipline. Byers v. Turner, 189 So. 3d 1281 (Miss. Ct. App. 2016).

In a reciprocal disciplinary proceeding in which an attorney had been suspended in Mississippi for failing to pay his enrollment fees, the attorney was still subject to the disciplinary jurisdiction of the Mississippi Supreme Court, and, pursuant to Miss. R. Disc. St. Bar 1, the Mississippi Supreme Court had exclusive and inherent jurisdiction of matters pertaining to attorney discipline. Miss. Bar v. Inserra, 38 So. 3d 605 (Miss. 2009).

Where the attorney filed a petition for reinstatement, the Mississippi Supreme Court had exclusive and inherent jurisdiction over the matter pursuant to Miss. R. Disc. St. Bar 1(a). In re Baldwin, 890 So. 2d 56 (Miss. 2003).

Supreme court's delegation of responsibility for attorney discipline to complaint tribunal and to Mississippi Bar, as expressed in Rules of Discipline, does not strip court of its fundamental responsibility to prevent injustice to litigants; court retains ability to regulate, pending further proceedings under rules, the operation of the courts and the fair and just progress of litigation. In re Lewis, 654 So. 2d 1379 (Miss. 1995).

Review.

Complaint tribunal has opportunity to observe demeanor and attitude of witnesses, including the accused attorney, and therefore supreme court will give deference to the tribunal's findings. Parrish v. Mississippi Bar, 691 So. 2d 904 (Miss. 1996).

Rule 2. Power and enforcement.

(a) Each of the disciplinary agencies is hereby given such jurisdiction and lawful powers as are necessary to conduct a proper and speedy disposition of any complaint. The power to summons and examine witnesses under oath and to compel their attendance, or take or cause to be taken the deposition of witnesses, and to order the production of books, papers, records, and other documentary evidence necessary or material to the investigation or complaint, shall be co-equal to the powers exercisable by the courts of record of this State. All summonses or subpoenas shall be issued by the Clerk of the Court, and it shall be the duty of any person so summoned to appear and testify as in the writ commanded and to produce the books, papers, records, or other documentary evidence required. Summonses and subpoenas issued by the Clerk shall be served as in the Circuit Court.

(b) Any defiance of any summons or subpoenas so issued, or other extrajudicial conduct which shall inhibit, impede, or disrupt any of the above disciplinary agencies in the performance of the duties and in the exercise of the powers herein given shall be treated as contempt of Court and punishable accordingly.

Procedure

(2.1) The Clerk of the Court shall file all pleadings and issue all process. Summonses and subpoenas shall be served as in the Circuit Court; provided, such summonses and subpoenas shall avoid name identification of the accused attorney. Costs shall be paid by the party or person requesting the issuance.

Cross References — Disciplinary jurisdiction, see Mississippi Code of 1972, § 73-3-301.

Disciplinary agencies of court, see Mississippi Code of 1972, § 73-3-303.

Powers of disciplinary agencies, see Mississippi Code of 1972, § 73-3-307.

JUDICIAL DECISIONS

Constitutionality.
Construction.
Subpoenas.

Constitutionality.

Fifth Amendment privilege against self-incrimination could properly be asserted in bar disciplinary proceeding, and since attorney met his burden of establishing that privilege, bar complaint tribunal erred when it held that attorney must nevertheless answer. Mississippi State Bar v. Attorney L., 511 So. 2d 119 (Miss. 1987).

Construction.

Insofar as they may be applicable, discovery procedures contemplated by M.R.C.P. Rules 26-32 and 37 are available to either party in a bar disciplinary matter, for the taking of depositions of parties or witnesses. Mississippi State Bar v. Attorney L., 511 So. 2d 119 (Miss. 1987).

Subpoenas.

Where Committee on Professional Responsibility issued subpoena itself, instead of applying for a subpoena from the Clerk of Court, the subpoena was invalid, as it was not issued in accordance with rules of court. Mississippi Ethics Comm'n v. Committee on Professional Responsibility of Mississippi Bar, 672 So. 2d 1222 (Miss. 1996).

Rule 3. Disciplinary agencies designated.

For purposes of administering the Court's disciplinary jurisdiction, the following entities are hereby established and designated as agencies of the Court.

(a) The Board of Commissioners of the Bar.

(b) The Executive Director of the Bar and Complaint Counsel.

(c) Committee on Professional Responsibility.

(d) The Complaint Tribunal and Panels appointed by the Court.

(e) Receivers designated by the Committee, a tribunal or the Court.

(f) Other attorneys who may from time to time be requested in writing by the President or First Vice-President of the Bar or by the Court to assist with an investigation or prosecution.

(Amended October 24, 1984; amended effective February 9, 1988; amended August 23, 1988; amended effective January 8, 2015.)

Procedure

(3.1) When acting in the course of their disciplinary duties, each of the disciplinary agencies shall be considered a special master of the Court.

(3.2) The agencies shall be composed of active practicing attorneys or judges of the Circuit, Chancery or County Courts who are members of the Bar of this State and shall further be constituted as follows:

(a) *Board of Commissioners.* The Board of Commissioners of the Bar is provided for by Section 73-3-107, Mississippi Code of 1972. The Board shall have the authority to employ and compensate competent persons to serve as Complaint Counsel, Assistant Complaint Counsel and non-lawyer staff who shall serve at the pleasure of the Board, either in full-time or part-time capacity, as the Board may from time to time deem necessary or advisable to effect the disciplinary procedures set forth herein.

(b) *Committee on Professional Responsibility.* The Committee on Professional Responsibility shall be composed of six (6) members appointed by the President of the Bar for terms of two (2) years except the terms of the initial members shall be staggered in one and two year terms and shall consist of two members from each of the Supreme Court Districts of the state. The Chairman and Vice Chairman of the Committee shall be designated by the President of the Bar.

(c) *Panels.* The Court shall appoint a panel of judges and attorneys from each Supreme Court District, and from those panels Complaint Tribunals shall be designated and constituted as the need arises. The panel members shall be in such numbers as the Court may deem appropriate. The term of office of all panel members shall be three (3) years, except the terms of the initial members shall be staggered in one, two and three year terms. No panel member shall serve more than two consecutive three year terms. Appointments may be terminated by the Court.

(d) *Complaint Tribunal.* All tribunal members shall be selected from the panels mentioned above. Each tribunal shall consist of two attorneys and one judge, and the judge member shall serve as the presiding judge of the tribunal. Whenever a tribunal member is unable to serve or a hearing will be unduly delayed because of the unavailability of a tribunal member, the presiding judge may select from the remaining panel members an attorney to serve in the place of the attorney appointed by the court.

(e) *Receivers.* If the presiding judge is unable to serve or the hearing shall be unduly delayed, the Chief Justice may appoint a new presiding judge from the judge members on the panels. All members of a tribunal designated to hear and determine a case as hereafter provide shall conclude the matter, the termination of a term of office of one or more of its members notwithstanding. All members of a Complaint Tribunal shall reside in a Chancery and Circuit District different from that within which the accused attorney resides. Tribunal members shall be selected on a rotating basis from the panels mentioned above.

(f) *Other Attorneys.* The assistance of other attorneys shall be requested and utilized on a case-by-case basis, and they shall be deemed to act for the Court only when their assistance has been requested in writing by the President or the First Vice President of the Bar, such attorneys may be individuals or members of local professional responsibility committees or local complaint committees. [Amended November 16, 1995; amended January 16, 1996; amended April 18, 2002; amended effective January 8, 2015].

Cross References — Disciplinary agencies of court, see Mississippi Code of 1972, § 73-3-303.

Composition of disciplinary agencies, see Mississippi Code of 1972, § 73-3-305.

JUDICIAL DECISIONS

Committee on professional responsibility.

Where Committee on Professional Responsibility issued subpoena itself, instead of applying for a subpoena from the Clerk of Court, the subpoena was invalid, as it was not issued in accordance with rules of court. Mississippi Ethics Comm'n v. Committee on Professional Responsibility of Mississippi Bar, 672 So. 2d 1222 (Miss. 1996).

Rule 4. Initiation and filing of complaints.

(a) Any matter touching on the misconduct of an attorney licensed by the State of Mississippi or any attorney who renders or has rendered legal services in this state shall be called to the attention of Complaint Counsel either verbally or in writing.

(b) All attorneys, courts and their officers shall have the affirmative duty to notify Complaint Counsel of conduct of any attorney evincing unfitness for the practice of law or unprofessional or unethical conduct and any action taken by the Court.

(c) The committee on complaints shall not consider the matter until it has been reduced to writing.

(d) No complaint shall be considered by the Complaint Counsel or the Committee on Professional Responsibility unless received, discovered, or otherwise brought to their attention within three years after the date of discovery of the facts upon which the complaint is based. Complaints alleging violations of Rules 1.15, 8.1 and 8.4 (b) through (f) of the Rules of Professional Conduct shall not be covered by this limitation.

Procedure

(4.1) Complaint Counsel shall keep a docket of all written complaints, but same shall not be considered a grievance or charge touching the attorney's conduct until docketed with the Executive Director of the Bar by the Committee on Professional Responsibility. Until docketed with the Executive Director, the attorney may state that no complaint, grievance or charge has been filed against him. Complaints at any stage may be reported for statistical purposes.

(4.2) Written complaints shall contain:

(a) The name, mailing address, and phone number of the complainant; and

(b) The name and address of the accused attorney; and

(c) A statement of the facts of the complaint; and

(d) A list of witnesses, with addresses and phone numbers, if known; and

(e) Copies of any statement by the witnesses and documents in support of the statement of facts of the complaint.

(4.3) If a written complaint is found to be deficient, complaint counsel may return it to complainant with a statement of the deficiency. All such complaints shall be reported to the Committee on Professional Responsibility if the deficiency has not been cured within forty-five (45) days of the date on which the same was returned to the complaining person. The Committee on Professional Responsibility thereafter may act upon those matters as provided in Rule 7. (Amended November 16, 1995.)

Cross References — Committee on complaints referral of complaints, and formal requirement of complaints, see Mississippi Code of 1972, § 73-3-309.

JUDICIAL DECISIONS

Complaint not in writing.
— No prejudice found.

Complaint not in writing.

— No prejudice found.
Though the Mississippi Bar violated Miss. R. Disc. State Bar 4(c) by considering a complaint against an attorney that had not been reduced to writing, because the Bar kept the attorney informed of each step it took and was planning to take outside of the prescribed procedure, the attorney waived his procedural argument and was not prejudiced by the deviations from the Rule. The Miss. Bar v. Coleman, 849 So. 2d 867 (Miss. 2002).

Rule 5. Complaint counsel — Duties and powers.

The Complaint Counsel shall investigate complaints, prosecute formal complaints, and discharge other duties assigned by the Board of Commissioners. Complaint Counsel shall conduct any investigation or investigatory hearing fairly and impartially and shall seek to elicit any and all facts which might be exculpatory or incriminatory of the accused attorney. All proceedings under these rules shall be expeditiously conducted to the end that no complainant be deprived of his right to a timely, fair and proper investigation of a complaint and that no attorney be subjected to unfair and unjust charges.

Procedure

(5.1) General. — Upon receipt of a written complaint or information indicating probable cause, Complaint Counsel shall conduct an investigation, either with or without notice to the accused attorney, as in Counsel's discretion appears appropriate. Complaint Counsel may require a complaint to be in writing or may file a complaint on information and belief. Statements and evidence during an investigation shall be obtained in the most expeditious and efficient manner possible without a sacrifice of accuracy.

(5.2) Investigations and Reports. — Complaint Counsel shall investigate and report to the Committee on Professional Responsibility within sixty (60) days from receipt of the written complaint. Upon completion of the investigation, a copy of the report, complaint and all evidence shall be served upon the attorney. In Complaint Counsel's discretion, the complaint and evidence may be served upon the attorney prior to submission of the report to the Committee on Professional Responsibility.

(5.3) Any responses by the attorney to the report shall be tendered to Complaint Counsel within fifteen (15) days of the mailing of the report.

(5.4) The Chair of the Committee on Professional Responsibility may enlarge the time for completion of an investigation and submission of Complaint Counsel's report or the attorney's responses.

(5.5) Process During Investigations. — Subpoenas during investigations may be issued only upon approval of the Chair or a majority of the Committee on Professional Responsibility.

(5.6) Complaining Person or Witnesses. — The person signing the complaint is not a party to the proceedings, and the failure or refusal of that person or any witness to cooperate during the investigation shall not be cause for dismissal of the complaint or termination of the investigation or proceedings before a complaint tribunal. Any person signing a complaint or any witness may be represented by counsel or may proceed as counsel for themselves during any investigation.

(5.7) The Accused Attorney. — The accused attorney is a party to the proceedings, and after written notice of the investigation or complaint has been given to the attorney by Complaint Counsel, the accused attorney or his counsel may appear at any investigatory hearing conducted by complaint counsel.

(5.8) The Investigatory Hearing. — An investigatory hearing in the discretion of complaint counsel or by direction of the Committee on Professional Responsibility may be conducted during the investigation and prior to the submission of complaint counsel's report to the committee. After written notice of the complaint or investigation is given to the attorney, such attorney or counsel therefor shall have the right to appear at any investigatory hearing for the purposes of examining or cross-examining all witnesses and for presenting witnesses and evidence on behalf of the attorney. (Amended November 16, 1995.)

Cross References — Complaint counsel — investigations, notice and hearing to accused attorney, see Mississippi Code of 1972, § 73-3-313.

Complaint counsel — rules governing investigatory hearings, see Mississippi Code of 1972, § 73-3-315.

JUDICIAL DECISIONS

Duties.
Timeliness.

Duties.

Rules of Discipline prohibit an attorney for a person lodging a complaint with the Mississippi State Bar from taking part in the Bar's disciplinary hearings or proceedings except to be present, confer with, and advise the complainant who serves as a witness in such proceedings. In re Attorney A, 565 So. 2d 1139 (Miss. 1990).

Timeliness.

This rule is directory and not jurisdictional, and attorney was not entitled to dismissal of disciplinary charges as untimely where there had been no showing of an unconstitutional delay in the proceedings. Emil v. Mississippi Bar, 690 So. 2d 301 (Miss. 1997).

Rule 6. Suspensions and disbarments based on other proceedings.

(a) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall be convicted in any court of any state or in any federal court, or enter a plea of guilty or a plea of nolo contendere therein, or tender a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision in state or federal law therein of any felony (other than manslaughter) or of any misdemeanor involving fraud, dishonesty, misrepresentation, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment of conviction or order accepting or acknowledging the offer or tender of a guilty plea pursuant to the provisions of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision in state or federal law shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof. The Court shall then forthwith strike the name of the attorney and order his immediate suspension from the practice of law.

(b) Upon reversal of the conviction or judgment that has resulted in the automatic suspension, the attorney may seek reinstatement pursuant to Rule 12. For purposes of these rules executive clemency or pardon shall not constitute reversal of the conviction and shall not bar or terminate disciplinary proceedings predicated upon such convictions or judgments. Dismissal of charges pursuant to the provision of Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar state or federal statute shall have no effect upon disciplinary proceedings or sanctions predicated upon an entry, offer or tender of a plea of guilty or nolo contendere.

(c) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall have entered against him in any Court of any State or in any

Federal Court a civil judgment in accordance with Section 11-49-3, Mississippi Code of 1972, or any other civil judgment based upon clear and convincing evidence of fraud, misrepresentation, dishonesty, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment, upon becoming final, shall be presented to the Court by Complaint Counsel and shall constitute sufficient, clear and convincing evidence of the facts necessary to support such judgment, and, unless successfully rebutted, the Court shall forthwith strike the name of the attorney and order his immediate suspension from the practice of law. This section shall not apply to Internal Revenue Code, Federal Communications Commission, Securities and Exchange Commission, Federal Trade Commission, and/or similar Federal Agency violations involving civil judgments and/or civil penalties, but nothing herein contained shall prohibit disciplinary prosecution for felony convictions based upon such violations.

(d) When time for appeal from judgment or conviction provided above expires or all appeals have been concluded without reversal, Complaint Counsel shall certify that result to the Court, and the Court shall forthwith enter an order of disbarment.

(e) Upon conviction of manslaughter, Complaint Counsel shall immediately commence an investigation and where warranted shall, upon directive of the Committee on Professional Responsibility, present same to the Court for its consideration as herein set out.

(f) The judge of any court within this state shall have the affirmative duty to cause a certified copy of a conviction or judgment or order accepting or acknowledging the offer or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision of a state or federal law to be transmitted to Complaint Counsel.

Procedure

(6.1) A Formal Complaint, with a certified copy of the criminal judgment or conviction or order accepting or acknowledging the entry, offer, or tender of a plea pursuant to Miss. Code Ann. § 99-15-26 (Supp. 1993), or any similar provision of state or federal law attached, and a motion for indefinite suspension pending appeals shall be filed with the Court, upon which the attorney shall be automatically suspended subject to the right of such attorney to move for reconsideration upon a showing that the judgment or conviction has been reversed or a new trial is granted.

(6.2) Upon a showing that the time for all appeals has expired, or that all appeals have been concluded without reversal, the attorney shall be automatically disbarred.

(6.3) In a proceeding based upon a civil judgment, Complaint Counsel shall file a Formal Complaint, with a certified copy of the judgment attached, which shall constitute a prima facie case.

(6.4) Matters of Public Record.— All proceedings brought pursuant to Rule 6 shall in all respects be matter of public record, Rule 15 notwithstanding.

[6.1 amended to apply to attorney discipline cases arising after January 13, 1994.] (Amended to apply to attorney discipline cases arising after January 13, 1994; corrected March 21, 1994; amended November 16, 1995; amended July 1, 2008.)

Cross References — Conviction or entry of plea of nolo contendere for certain offenses, see Mississippi Code of 1972, § 73-3-339.

JUDICIAL DECISIONS

In general.
Bad checks.
Bribery.
Civil judgments.
Contempt.
Driving under the influence.
Drug offenses.
Embezzlement.
False statements.
Federal offenses.
Information embezzlement.
Perjury.
Reciprocity.
Stay pending appeal.
Theft.
Unethical financial conduct.

In general.

Mississippi Bar's request to disbar an attorney was denied because disbarring the attorney approximately 24 years after his conviction and 13 years after the Mississippi Bar restored him from inactive to active status failed to serve the purposes of the Rules of Discipline, would certainly prejudice him, and would be a harsh and ineffective sanction. Miss. Bar v. Collins, 119 So. 3d 1039 (Miss. 2013).

In a Miss. R. Disc. St. Bar 13 proceeding in which an attorney had been permanently disbarred from the practice of law in Louisiana after he pled guilty to inciting a felony, while the attorney offered several mitigating factors for consideration by the Supreme Court of Mississippi, he cited no extraordinary circumstances which compelled, justified or supported variance from Louisiana's sanction. Additionally, Miss. R. Disc. St. Bar 6 provided for disbarment following a plea of guilty to any felony in any state or federal court. Miss. Bar v. Dorhauer, 38 So. 3d 610 (Miss. 2009).

Attorney was disbarred under Miss. R. Disc. St. Bar 6 because he filed a Notice of Irrevocable Resignation under Miss. R. Disc. St. Bar 10.5. State Bar v. Naugle, 968 So. 2d 1266 (Miss. 2007).

Attorney's disbarment was appropriate pursuant to Miss. R. Disc. St. Bar 6 because the attorney had pled guilty to the crime of accessory after the fact in violation of Miss. Code Ann. § 97-1-5 and she had been ordered to voluntarily surrender her license to practice law; all procedural prerequisites had been met and disbarment was required. Miss. Bar v. Smith-Miller, 962 So. 2d 545 (Miss. 2007).

Attorney was disbarred from the practice of law in Mississippi under Miss. R. Disc. St. Bar 6 where he entered a guilty plea to possession of child pornography and was sentenced to probation; the purpose of discipline was to protect the public, the administration of justice, to maintain appropriate professional standards, and deter similar conduct. Miss. Bar v. Robinson, 918 So. 2d 1264 (Miss. 2005).

Mississippi Supreme Court had exclusive inherent jurisdiction over an attorney and his or her license to practice law in Mississippi. Thus, Miss. Code Ann. § 73-3-41, which allowed any court (in the instant case a circuit court), to disbar an attorney, was in direct conflict with the aforementioned rule; however, the substantive and procedural prerequisites of Miss. R. Disc. St. Bar 6 had been satisfied, and therefore, the attorney who was convicted of a felony, was suspended from the practice of law pending his appeal of the criminal conviction. Miss. Bar v. Jackson, 904 So. 2d 109 (Miss. 2004).

Mississippi Supreme Court has the power to render immediate sanctions for admitted felonious conduct under the nonadjudication of guilt statutory procedure of Miss. Code Ann. § 99-15-26 and Miss. R. Disc. St. Bar 6, without a hearing by a complaint tribunal; however, the Supreme Court does not extend that rule to include admitted felonious conduct under the Mississippi Pretrial Intervention Act, Miss. Code Ann. §§ 99-15-101, et seq. The critical difference between the non-adjudication statute and the Act is that the former requires the entry of a sworn guilty plea before the circuit or county court while the latter does not, and since the attorney had not offered a guilty plea entered under oath before the circuit court, nor had the circuit court entered an order with respect the attorney's felony level offense, disbarment proceedings were properly stayed until such time as the attorney was able to complete the Mississippi Pretrial Intervention Program, and until such time as a disposition of all charges against him had been entered. Miss. Bar v. Cofer, 904 So. 2d 97 (Miss. 2004), dismissed by 2011 Miss. LEXIS 253 (Miss. May 12, 2011).

The Supreme Court has the power to render immediate sanctions for admitted felonious conduct under this rule and the non-adjudication of guilt statutory procedure found in § 99-15-26. Mississippi Bar v. Baldwin, 752 So. 2d 996 (Miss. 1999).

Formal disciplinary complaint was correctly brought under this rule, against attorney who entered guilty plea to federal crime involving fraud, dishonesty, misrepresentation and deceit; reasons why attorney entered plea, whether for leniency, fear of harsher punishment, or other reasons, were irrelevant to complaint filed under this rule. Holmes v. Mississippi State Bar Ass'n, 498 So. 2d 837 (Miss. 1986).

Bad checks.

Attorney who pled guilty to charge of false pretense for issuance of bad check was disbarred and his license to practice law rescinded. Mississippi Bar v. Clifton, 625 So. 2d 804 (Miss. 1993).

Attorney's convictions for executing bad checks constituted misdemeanor convictions involving fraud, dishonesty, misrepresentation and deceit, as set forth in this rule. Mississippi State Bar Ass'n v. Cotter, 512 So. 2d 1288 (Miss. 1987).

Bribery.

Attorney met the requirements for reinstatement under Miss. R. Disc. St. Bar 12.7, given that (1) the attorney's plea of guilty to a charge of bribery of a public official, for purposes of Miss. R. Disc. St. Bar 6(a), was not accepted by the trial court and the trial court dismissed the charges finding that there was a strong doubt as to the State's ability to carry its burden of proof, (2) the only basis for the attorney's suspension was the plea to the charge that was dismissed, (3) there was no evidence that anyone besides the attorney suffered pecuniary loss, (4) the complaint tribunal found no evidence that the attorney ever lacked the requisite moral character to practice law, many people testified as to his character and recommended reinstatement, and the attorney testified that he ministered to youth in his community, and (5) the complaint tribunal found no reason to suspect that the attorney lacked the requisite legal education to practice law, plus the attorney had attended various seminars that offered continuing legal education credit and reviewed the court's hand-down lists on the court's website, and the tribunal recommended, pursuant to Miss. R. Disc. St. Bar 12.5, that the attorney not be required to take the Multi-State Professional Responsibility Exam because there was no evidence that he was lacking in ethical responsibility; the court accepted the recommendations and reinstated the attorney to the practice of law. In re Shelton, 987 So. 2d 938 (Miss. 2008).

Supreme court's referral of the attorney's petition for reinstatement to the Complaint Tribunal after he was suspended pursuant to Miss. R. Disc. St. Bar 6(a) subsequent to entering an Alford plea to bribery of a judge was appropriate even though the attorney was eligible for reinstatement under Miss. R. Disc. St. Bar 12, because his petition before the supreme court failed to meet the requisite burden of proof for reinstatement. In re Shelton, 987 So. 2d 898 (Miss. 2006).

Because an attorney entered a valid plea of guilty to charges of bribery under Miss. Code Ann. § 97-11-11, pursuant to the requirements of Miss. R. Disc. St. B. 6, the attorney demonstrated evidence of unprofessional and unethical conduct evincing unfitness for the practice of law, which warranted immediate suspension, and while the plea might later be withdrawn, the court found that this provided the attorney no relief from the application of

Rule 6; furthermore, the court had the power to render immediate sanctions for admitted felonies under the non-adjudication of guilt statutory procedure of Miss. Code Ann. § 99-15-26 and Miss. R. Disc. St. B. 6 without a hearing by a complaint tribunal. Miss. Bar v. Shelton, 890 So. 2d 827 (Miss. 2003).

Civil judgments.

Civil judgment against attorney, in action by mortgage company for conversion, met requirement for disbarment under subdivision (c) of this rule. Mississippi State Bar v. Nichols, 562 So. 2d 1285 (Miss. 1990).

Contempt.

This rule did not apply to a conviction in a contempt proceeding before a judge, even though contempt may have arisen from an attorney's misrepresentation to a court, since attorney had not been convicted of any criminal offense. Mississippi State Bar v. Attorney A., 475 So. 2d 1164 (Miss. 1985).

Driving under the influence.

Where an attorney pled guilty to felony driving under the influence and the complaint counsel forwarded to the court a certified copy of the probation order entered against the attorney, the certified copy constituted conclusive evidence of the attorney's guilt and required that the court enter an order disbarring him. The Mississippi Bar v. Woolbright, 797 So. 2d 208 (Miss. 2000).

Drug offenses.

Where the attorney was found guilty of the crime of sale of marijuana within a correctional facility in violation of Miss. Code Ann. § 47-5-198, the Mississippi Bar filed a formal complaint against him pursuant to Miss. R. Disc. St. Bar 6. The Supreme Court of Mississippi disbarred the attorney from the practice of law. Miss. Bar v. Jackson, 987 So. 2d 930 (Miss. 2008).

Attorney was disbarred where the crime to which the attorney pleaded guilty, of which he was convicted andfor which he was sentenced, possession of methamphetamine, was among those contemplated by Miss. R. Disc. St. Bar 6 and required his disbarment and the striking of his name from the rolls of those licensed to practice law in Mississippi. Miss. Bar v. Brackeen, 890 So. 2d 62 (Miss. 2004).

Disbarment was mandated under subsection (a) of this rule where attorney pled guilty to the charge of possession of cocaine, a crime resulting in unprofessional and unethical conduct evincing unfitness for the practice of law. Mississippi Bar v. Baldwin, 752 So. 2d 996 (Miss. 1999).

Attorney found guilty of drug offenses and of enticing an individual to travel in interstate commerce for the purpose of prostitution was disbarred and assessed costs. Mississippi Bar v. Parsons, 677 So. 2d 192 (Miss. 1996).

Embezzlement.

Attorney was disbarred from the practice of law in the State of Mississippi because a conviction for the crime of embezzlement was cause for summary disbarment; the Mississippi Bar attached a certified copy of the judgment of conviction against the attorney, which the supreme court treated as conclusive evidence that the attorney committed the disbarrable offense of felony embezzlement of $5,000 to $25,000; and the attorney admitted her conviction and conceded that the Bar should be granted the relief it requested. Miss. Bar v. Plunkett, — So. 3d —, 2019 Miss. LEXIS 83 (Miss. Feb. 27, 2019).

Attorney's embezzlement conviction required that he be disbarred pursuant to the provisions of Miss. R. Disc. St. Bar 6(a). Miss. Bar v. McInnis, 905 So. 2d 505 (Miss. 2004).

Because an attorney had entered a guilty plea to an embezzlement charge, and a certified copy of the judgment had been forwarded to the court, conclusive evidence of the attorney's guilt existed, as required by Miss. R. Disc. St. Bar 6(a); since no further proceedings were filed in the attorney's criminal case, the attorney's conviction was final and Rule 6(d) required that the court enter an order disbarring the attorney. Miss. Bar v. Boyd, 890 So. 2d 857 (Miss. 2004).

Attorney who pled guilty to theft or embezzlement of government property was disbarred and assessed costs. Mississippi Bar v. Murphy, 675 So. 2d 845 (Miss. 1996).

Attorney was disbarred following his plea of guilty to felony of conspiracy to embezzle ERISA funds. Mississippi Bar v. Sykes, 637 So. 2d 192 (Miss. 1994).

On its face, order accepting attorney's guilty plea to charge of embezzlement was well within circuit court's authority, and it therefore brought him within general scope of this rule's summary process. Mississippi State Bar v. Odom, 573 So. 2d 710 (Miss. 1990).

False statements.

Attorney adjudicated guilty of felony of filing false currency reporting forms was disbarred from practice of law. Mississippi Bar v. McGuire, 694 So. 2d 674 (Miss. 1997).

Where an attorney entered a conditional guilty plea in federal court to aiding and assisting in fraud and false statements related to the filing of a return with the Internal Revenue Service, he was immediately suspended from practicing law, though he had reserved his right to appeal his conviction, as conclusive evidence proved that he had committed a crime resulting in unprofessional and unethical conduct evincing unfitness for the practice of law; if his conviction was reversed, under Miss. R. Disc. St. Bar 6(b) he would be reinstated. Miss. Bar v. Shelton, 855 So. 2d 444 (Miss. 2003).

Attorney convicted in federal court for crime of falsifying a document would be reinstated to practice law upon earning a passing score on examinations required by rule. In re McHann, 691 So. 2d 422 (Miss. 1997).

Falsification of Housing and Urban Development loan closing statement was among types of offenses contemplated by this rule, as it was a misdemeanor involving dishonesty, fraud, deceit or misrepresentation, and sanction of automatic disbarment was warranted. Mississippi Bar v. McHann, 618 So. 2d 702 (Miss. 1993).

Attorney was disbarred due to multiple felony convictions of financial institution fraud and making false statements to influence actions of a federally insured financial institution. Watkins v. Mississippi Bar, 589 So. 2d 660 (Miss. 1991).

Federal offenses.

Given that an attorney's conviction of a felony in a federal district court was affirmed on appeal and she had exhausted the appellate process, Miss. R. Disc. St. Bar 6 required the Supreme Court of Mississippi to disbar the attorney from the practice of law in Mississippi. Miss. Bar v. Castle, 38 So. 3d 632 (Miss. 2010).

In a case in which an attorney and several attorneys across the country entered into a fee-splitting and referral-fee agreement to recruit clients for settlements in a multi-jurisdiction mass tort case and he had pled guilty to violating 18 U.S.C.S. §§ 371, 1341, and 1343, the crimes for which he was convicted and sentenced are among those contemplated by Miss. R. Disc. St. Bar 6, and Rule 6(d) provided for disbarment. Miss. Bar v. Arledge, 37 So. 3d 607 (Miss. 2009).

Pursuant to Miss. R. Disc. St. Bar 6, the Mississippi Bar filed a formal complaint seeking the disbarment of an attorney, who pled guilty in a federal district court to one count of conspiracy to corruptly influence an elected state official in violation of 18 U.S.C.S. § 371. The Mississippi Bar met its burden of proof in the attorney's disciplinary matter and was entitled to the disbarment of the attorney because (1) the attorney pled guilty to the felony offense of conspiracy to corruptly influence an elected state official in violation of 18 U.S.C.S. § 371; and (2) the attorney filed his notice of irrevocable resignation pursuant to Miss. R. Disc. St. Bar 10(b) and 10.5. Miss. Bar v. Langston, 987 So. 2d 936 (Miss. 2008); Miss. Bar v. Balducci, 987 So. 2d 933 (Miss. 2008).

Where the Mississippi Bar filed a formal complaint against an attorney based on his felony convictions in federal court for conspiracy, racketeering, mail fraud/honest services fraud, wire fraud/honest services fraud and bribery involving a federally funded program, the Supreme Court of Mississippi granted the Bar's motion for indefinite suspension pursuant to Miss. R. Disc. St. Bar 6. Miss. Bar v. Minor, 35 So. 3d 1206 (Miss. 2008); Miss. Bar v. Teel, 35 So. 3d 1206 (Miss. 2008).

Where the Mississippi Bar filed a formal complaint against an attorney based on his felony convictions in federal court, the Supreme Court of Mississippi granted the Bar's motion for indefinite suspension pursuant to Miss. R. Disc. St. Bar 6. Miss.

Comm'n on Judicial Performance v. Thompson, 972 So. 2d 582 (Miss. 2008).

Attorney was disbarred because he was convicted, upon a plea of guilty in federal court, of the offense of concealment of assets from a bankruptcy trustee in violation of 18 U.S.C.S. § 152(1), a felony within the meaning of the term as used in Miss. R. Disc. St. Bar 6. Miss. Bar v. Jones, 904 So. 2d 1026 (Miss. 2004).

Based on the attorney's guilty plea to one count of conspiracy to commit extortion under color of official right in violation of 18 U.S.C.S. § 371, the crime was a felony warranting the imposition of disbarment. Miss. Bar v. Stewart, 890 So. 2d 900 (Miss. 2004).

Where an attorney entered a conditional guilty plea in federal court to aiding and assisting in fraud and false statements related to the filing of a return with the Internal Revenue Service, he was immediately suspended from practicing law, though he had reserved his right to appeal his conviction, as conclusive evidence proved that he had committed a crime resulting in unprofessional and unethical conduct evincing unfitness for the practice of law; if his conviction was reversed, under Miss. R. Disc. St. Bar 6(b) he would be reinstated. Miss. Bar v. Shelton, 855 So. 2d 444 (Miss. 2003).

Attorney's disbarment was proper where he was adjudicated guilty of various federal felonies involving conspiracy, wire fraud, racketeering, and obstruction of justice. The Miss. Bar v. Halat, 849 So. 2d 866 (Miss. 2002).

Information embezzlement.

An attorney would be disbarred where he pleaded guilty to information embezzlement, which is a felony, and filed a letter stating that he did not object to the formal complaint seeking his disbarment. Mississippi Bar v. Benson, 749 So. 2d 1052 (Miss. 1999).

Perjury.

Attorney convicted of perjury in federal court was not entitled to formation of a bar complaint tribunal to hear and determine his case, since disciplinary matters based on conviction of crime proceed upon a factual record which is documentary in nature, where court's function is merely the correct ascertainment of and application of law to uncontradicted facts. Mississippi State Bar v. Nixon, 494 So. 2d 1388 (Miss. 1986).

Reciprocity.

When another jurisdiction has imposed on a Mississippi lawyer a sanction of suspension or disbarment, the matter of reciprocal discipline is to be presented directly to the supreme court and not to a complaint tribunal, with the sole issue to be the extent of final discipline to be imposed on the attorney in Mississippi. Mississippi Bar v. Strauss, 601 So. 2d 840 (Miss. 1992).

Stay pending appeal.

Where an attorney entered a conditional guilty plea in federal court to aiding and assisting in fraud and false statements related to the filing of a return with the Internal Revenue Service, he was immediately suspended from practicing law, though he had reserved his right to appeal his conviction, as conclusive evidence proved that he had committed a crime resulting in unprofessional and unethical conduct evincing unfitness for the practice of law; if his conviction was reversed, under Miss. R. Disc. St. Bar 6(b) he would be reinstated. Miss. Bar v. Shelton, 855 So. 2d 444 (Miss. 2003).

Attorney subject to disciplinary proceeding under this rule was not entitled to stay of proceedings pending final disposition of his appeal before federal appeals court. Mississippi State Bar v. Nixon, 494 So. 2d 1388 (Miss. 1986).

Theft.

Attorney's conviction for theft of government property supported finding that he engaged in unprofessional and unethical conduct, and conduct evincing unfitness for the practice of law, justifying disbarment. Mississippi Bar v. McCarthy, 680 So. 2d 856 (Miss. 1996).

Unethical financial conduct.

Attorney's disbarment from the practice of law was appropriate under Miss. R. Disc. St. Bar 6(c) because his fraud, perjury, embezzlement, and abuse concerning a minor client's guardianship rendered him grossly unfit to practice law. Consequently, the Mississippi Bar met its burden to show that the attorney should be disbarred immediately. Miss. Bar v. Brown, 118 So. 3d 545 (Miss. 2012).

An attorney was guilty of unprofessional and unethical conduct and conduct evincing unfitness for the practice of law and was disbarred pursuant to Rule 6(d) where he pleaded guilty to 18 U.S.C. § 2314 (interstate transportation of stolen money) and 18 U.S.C. § 5324(a)(3) (structuring transactions) in a United States District Court. The Mississippi Bar v. Thompson, 797 So. 2d 197 (Miss. 2000).

Rule 7. Committee on professional responsibility — Duties and powers.

(a) The Committee shall function as a grand jury in matters of attorney discipline.

(b) Upon receipt of a complaint, Complaint Counsel's report and any response by the attorney, within a reasonable time the Committee shall:

(i) Dismiss any complaint without merit and retire the file; or

(ii) Direct or conduct further investigation if needed; or

(iii) Refer the matter to Complaint Counsel for filing and prosecution of a Formal Complaint; or

(iv) If investigation discloses a minor ethical violation or instance of relatively trivial misconduct or an isolated instance of a minor nature, then the committee shall be authorized to issue a letter of admonition, a private reprimand, or a public reprimand.

(v) In its discretion, and with the assent and accord of the attorney who is the subject of the complaint, in addition to any action taken by the Committee under (ii), (iii) or (iv) of this paragraph, not withstanding the provisions of Rule 15(a) of these rules, delay final action and refer the attorney to the Lawyers and Judges Assistance Committee for evaluation and, as recommended by the Lawyers and Judges Assistance Committee, treatment, monitoring and assistance.

(c) If issued, a letter of admonition, a private reprimand, or a public reprimand shall be sent to the accused attorney and a copy shall be sent to the complaining party. The accused attorney shall have a right within twenty days after receipt of the letter or reprimand to request in writing that a formal disciplinary proceeding be initiated against him to adjudicate the propriety of the conduct upon which the admonition or reprimand is based. If such request is timely made, the letter of admonition or reprimand shall be vacated, and the matter shall be processed by means of a formal complaint. An informal admonition shall not be used as a substitute for and shall not be considered, discipline. However, the fact, nature, and cause of such informal admonition may be disclosed in any subsequent disciplinary proceedings against the accused attorney for an informal admonition, private reprimand, or public reprimand and issued by the Committee.

(d) Referral to the Lawyers and Judges Assistance Committee may not be used as a substitute for, and may not be considered, discipline. However, notwithstanding the provisions of Rule 15(a) of these rules, the Committee, in its discretion, may delay any action under (ii), (iii) or (iv) of paragraph (b) of this rule provided that an attorney who is referred to the Lawyers and Judges

Assistance Committee by the Committee complies with all terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee. If an attorney violates the terms and conditions imposed by the Lawyers and Judges Assistance Committee upon such attorney, notwithstanding the provisions of Rule (3.2)(g)(3) of these rules, the Lawyers and Judges Assistance Committee, in accordance with Rule (3.2)(g)(5) of these rules, shall report such failure to comply with all terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee, and upon receipt of such report, the Committee shall take such action under paragraph (b) which the Committee delayed but originally could have taken. In any notification to the complainant of the action or actions taken by the Committee, the Committee, in its discretion, may decide not to include notice of the Committee's referral of the attorney to the Lawyers and Judges Assistance Program.

Procedure

(7.1) Dismissals.— Any complaint dismissed pursuant to Rule (b)(i) shall be neither reported to nor docketed by the Executive Director of the Bar, and such complaints shall be deemed expunged and not considered a charge touching upon the conduct of the attorney. Upon dismissal, the complaining person, the accused attorney and Complaint Counsel shall be given notice.

(7.2) Referrals for Investigation.— Upon receipt of Complaint Counsel's report and any response by the attorney, the Committee may refer the matter for additional investigation and report with such instructions as may appear appropriate. The Committee shall periodically fix the costs and expenses incurred as of that date; provided, no cost shall actually be assessed unless a discipline is finally imposed. Upon referral for additional investigation and report, Complaint Counsel shall have not more than sixty (60) days from and after the date of receipt of the referral directive to conclude the additional investigation and report back to the Committee. A copy of that report and all evidence shall be served upon the accused attorney who shall have fifteen (15) days to respond. Within thirty (30) days, unless enlarged by the Chairman, the Committee on Professional Responsibility shall act upon the matter.

(7.3) Formal Complaints.— If, after conclusion of the investigation, the Committee is of the opinion that probable cause exists to believe the attorney is guilty of conduct warranting discipline, the matter shall be referred to Complaint Counsel for filing of a Formal Complaint for trial before a Complaint Tribunal. Within thirty (30) days of the date of the receipt of the directive, Complaint Counsel shall file the Formal Complaint with the Clerk of the Court with a certificate of costs incurred to date.

(7.4) Complaints Docketed by the Executive Director.— Formal Complaints shall be docketed by the Executive Director and shall not be expunged except on order of a Complaint Tribunal of the Court. (Amended November 16, 1995; amended April 18, 2002.)

Cross References — Committee on complaints — action to be taken upon receipt of complaint counsel's report, see Mississippi Code of 1972, § 73-3-319.

JUDICIAL DECISIONS

Appeals.
Due process.
Grand jury function.

Appeals.

There is no constitutional or statutory provision authorizing an appeal from dismissal of a complaint filed against an attorney before the Mississippi State Bar Committee on Complaints; neither this rule nor any other extant rule of law authorizes supreme court to hear such appeal. Smith v. Mississippi State Bar, 475 So. 2d 148 (Miss. 1985).

Due process.

Attorney's due process rights were not violated even though she did not receive notice of possible allegations and was not given opportunity to cross-examine witnesses during committee's pre-complaint investigative proceedings; formal complaint clearly included all disciplinary rules of which tribunal found her in violation; had attorney responded to complaint she would have been in position to exercise all due process rights to which she was entitled, and tribunal employed the required clear and convincing burden of proof. Terrell v. Mississippi Bar, 635 So. 2d 1377 (Miss. 1994).

Grand jury function.

Just as it is impermissible to question members of a grand jury about their deliberations, it is likewise improper to question members of the Committee on Professional Responsibility to discover why they made particular decisions. Mississippi State Bar v. Blackmon, 600 So. 2d 166 (Miss. 1992).

Rule 8. Complaint tribunal — Powers and duties.

(a) All formal complaints shall be filed with the Clerk of the court and the Court shall designate a Complaint Tribunal to hear and determine the matter. Hearings before Complaint Tribunals shall be as cases in chancery.

(b) At the conclusion of the hearing, upon majority vote, the tribunal shall render a written opinion incorporating a finding of fact and a judgment which may:

(i) Exonerate the accused attorney and dismiss the Formal Complaint; or

(ii) Publicly or privately reprimand the attorney; or

(iii) Suspend the attorney with or without probation for a fixed period of time and may specify conditions precedent to reinstatement; or

(iv) Disbar the attorney; or

(v) In addition to any disposition authorized under this paragraph, with the assent and accord of the attorney who is the subject of the complaint, notwithstanding the provisions of Rule 15 of these rules, refer the attorney to the Lawyers and Judges Assistance Committee for evaluation and, as recommended by such committee, treatment, monitoring and assistance.

(c) The Complaint Tribunal shall have the power to enjoin violations under the Mississippi Rules of Professional Conduct.

Procedure

(8.1) Within ten (10) days following the designation of a Complaint Tribunal, the presiding judge shall establish a tentative schedule for discovery, motion hearings and rulings, trial and adjudication, all of which shall be completed within one hundred and eighty (180) days from the date of the designation of the Tribunal, unless extended by the Court on motion of either party for good cause shown.

(8.2) All Formal Complaints shall be prosecuted in the name of the Bar by Complaint Counsel unless the President or First Vice-President of the Bar shall appoint another attorney or attorneys to assist or proceed in the place of Complaint Counsel.

(8.3) The Formal Complaint shall be served in accordance with the applicable Mississippi Rules of Civil Procedure.

(8.4) Unless an enlargement of time be granted by the presiding judge of the Complaint Tribunal, the attorney's answer shall be filed within twenty (20) days after a copy of the Formal Complaint is served.

(8.5) Trials shall be held in the attorney's county of residence for those attorneys residing in the State of Mississippi; provided, upon written waiver by the attorney or upon motion made by either party and order by the Tribunal, trial may be held elsewhere. Trials shall be held before the Mississippi Supreme Court or a Tribunal sitting in Hinds County for those attorneys residing outside the State of Mississippi. The presiding judge shall hear and determine all pre-trial motions and all non-dispositive motions and enter all appropriate orders. The tribunal may hold such pre-trial conferences as deemed appropriate. Trial upon the merits shall be held before the full tribunal and shall be held as expeditiously as possible consistent with due process.

(8.6) Imposition of discipline. No discipline shall be imposed except upon clear and convincing evidence. After final hearing on the merits, the opinion of the Tribunal may provide the following:

(i) Exonerate the accused attorney and dismiss the Formal Complaint.

(ii) Publicly or privately reprimand the attorney. If the Tribunal is of the opinion that a private reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the Tribunal may order the attorney to appear before the Board of Commissioners of the Bar at the board meeting convening first after the reprimand becomes final or may have it forwarded to the attorney by the Clerk of the Court or by certified mail, return receipt requested, restricted delivery to addressee only. If the Tribunal is of the opinion that a Public Reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the Tribunal may order the attorney to appear before the Circuit Court of the attorney's county of residence on the first day of a term convening next after the date the reprimand becomes final or on some other similar day when a maximum number of the Bar and the public are present. When a reprimand becomes public, a copy shall be given to the person filing the complaint, the Executive Director of the Bar and to the judges of the circuit and chancery districts of the attorney's county of residence. A Final Public Reprimand shall be read by the senior judge or his the senior judge's designee at the time herein indicated and placed upon the minutes of the Court.

(iii) Suspend the attorney with or without probation for a fixed period of time, and may specify conditions precedent to reinstatement. When such orders of suspension become public, they shall be placed upon the minutes of the chancery and circuit courts of the attorney's county of residence, and shall immediately become matters of public record.

(iv) Disbar the attorney. Such orders, when entered, shall be treated as provided in subparagraph (iii), above.

(v) In addition to (ii), (iii), or (iv), notwithstanding the provisions of Rule 15 of these rules, with the assent and accord of the attorney who is the subject of the complaint, refer the attorney to the Lawyers and Judges Assistance Committee for evaluation and, as recommended by such committee, treatment, monitoring and assistance. The Tribunal may delay action under (ii), (iii) or (iv) of this Rule provided that an attorney who is referred to the Lawyers and Judges Assistance Committee by the Tribunal complies with the terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee. If an attorney violates the terms and conditions imposed by the Lawyers and Judges Assistance Committee upon such attorney, notwithstanding the provisions of Rule (3.2)(g)(3) of these rules, the Lawyers and Judges Assistance Committee, in accordance with Rule (3.2)(g)(5) of these rules shall report such failure to comply with all terms and conditions imposed upon the attorney by the Lawyers and Judges Assistance Committee, and upon receipt of such report, the Tribunal may take such action under paragraph (b) which the Tribunal delayed but originally could have taken. (Amended November 16, 1995; amended April 18, 2002; amended effective September 1, 2003; suspended by Order of August 8, 2003, reinstated effective October 1, 2004.)

Cross References — Filing and prosecution of formal complaints, requirements of complaints and other pleadings, and service, see Mississippi Code of 1972, § 73-3-321.

Complaint tribunal — designation, per diem, mileage and necessary expenses, see Mississippi Code of 1972, § 73-3-323.

Complaint tribunal — hearing, notice, and rules, see Mississippi Code of 1972, § 73-3-325.

Complaint tribunal — written opinion and judgment, see Mississippi Code of 1972, § 73-3-327.

JUDICIAL DECISIONS

Construction of discipline.
Delay.
Hearing requirement.
Notice.
Pleading.
Procedure.
Illustrative cases.

Construction of discipline.

Use of word “shall” in Rule 8.6 means that complaint tribunal has no discretion in meting out discipline once the Bar establishes beyond clear and convincing evidence that an attorney has violated Rules of Professional Conduct. Mississippi Bar v. Attorney HH, 671 So. 2d 1293 (Miss. 1995).

Delay.

In order to bar disciplinary proceedings due to delay, respondent must demonstrate substantial prejudice in his ability to present a defense. Mississippi Bar v. An Att’y, 636 So. 2d 371 (Miss. 1994), reh’g denied.

Hearing requirement.

Where unethical conduct not processed through a criminal court is charged against an attorney, the bar must present its proof in a Complaint Tribunal hearing before a sanction may be imposed. Mississippi Bar v. Attorney G., 630 So. 2d 344 (Miss. 1994).

Notice.

Bar complaint tribunal did not err in entering default judgment against attorney, despite fact that no scheduling order was ever set and it could not be proven that attorney had received notice of hearing date; attorney chose to represent himself and should have inquired into status of his case when he allegedly did not hear from Bar within a reasonable time after filing his response to the formal complaint. Fougerousse v. Mississippi State Bar Ass'n, 563 So. 2d 1363 (Miss. 1990).

Pleading.

Neither attorney's letter to member of bar complaint tribunal nor her discovery requests constituted an "answer" or a sufficient responsive pleading to disciplinary complaint of Mississippi Bar, and therefore tribunal did not err in entering default against attorney. Harrison v. Mississippi Bar, 637 So. 2d 204 (Miss. 1994).

Procedure.

This rule does not require a bifurcated hearing on issue of imposition of discipline. Terrell v. Mississippi Bar, 635 So. 2d 1377 (Miss. 1994).

Illustrative cases.

Mississippi Bar filed a formal complaint against the attorney after an investigation revealed that the attorney failed to file a habeas petition and neglected other legal matters for which he was paid due to a substance abuse problem. Pursuant to Miss. R. Disc. St. Bar 8, a complaint tribunal heard the matter and found that the attorney violated Miss. R. Prof. Conduct 1.2(a), 1.3, 1.4, 1.5, 1.15(b), 1.16(d), 8.1(b), and 8.4(a); the attorney was suspended from the practice of law for six months. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

Where an attorney received an informal admonishment in Tennessee for appearing as counsel in a civil case without fully complying with Tennessee's pro hac vice rule, a private reprimand was an appropriate sanction in Mississippi. Miss. Bar v. Atty. BBB, 890 So. 2d 882 (Miss. 2004).

Where an attorney was suspended in Arizona as a result of overdrawing the attorney's client trust account four times, reciprocal discipline in the form of a public reprimand pursuant to Miss. R. Disc. St. Bar 8.6(ii) was imposed in Mississippi pursuant to Miss. R. Disc. St. Bar 13. Miss. Bar v. Inserra, 855 So. 2d 447 (Miss. 2003).

Attorney was disbarred following default judgment, for falsifying law school transcript and fraudulently attempting to secure employment with two out-of-state law firms. Barfield v. Mississippi State Bar Ass'n, 547 So. 2d 46 (Miss. 1989).

Rule 9. Appeals.

(a) Either the Bar or the accused attorney may, as a matter of right, appeal any final disposition of the Tribunal to the Court.

(b) Where the Tribunal's final disposition is made upon a nolo contendere plea, an admission or an irrevocable resignation, the extent or absence of discipline shall be the sole question presented by an appeal.

Procedure

(9.1) Who May take An Appeal. Either the Board or the attorney may appeal a final disposition of the Tribunal. The Board of Commissioners of the Bar shall determine whether General Counsel shall take an appeal on behalf of the Bar. The Board of Bar Commissioners may direct General Counsel to perfect an appeal when the Board believes that the Tribunal's findings and decisions are arbitrary and capricious, not supported by substantial evidence, manifestly wrong, or in error as to a matter of law.

(9.2) Taking an Appeal. Any notice of appeal shall be filed and served on all opposing counsel within thirty (30) days of the date on which the Tribunal's judgment was filed with the Clerk of the Court and by paying within that time, all sums assessed as costs and expenses. Failure to give notice within that time or failure to pay the costs and expenses assessed, or failure to pay any costs due the Clerk of Court, shall be grounds for dismissal, notice and payment within the time provided being jurisdictional for any appeal. Otherwise, appeals shall be taken as in other civil cases.

(9.3) Distribution of Opinion and Judgment and Supersedeas. No private reprimand shall issue within thirty (30) days provided for taking an appeal or until the Court has disposed of any appeal, and an appeal duly perfected, as provided above, from a judgment of the tribunal imposing discipline of suspension for not more than six months shall operate as supersedeas except for making public the imposition of such public discipline or as provided in Rules 6(a) and 10, and the accused attorney shall be permitted to continue the practice of law until such time as the Court disposes of the appeal. In appeals from judgments imposing discipline of six months or more and those imposing disbarment, supersedeas shall be within the sound discretion of the Tribunal, subject to review by this Court, upon application of the accused attorney made within thirty days of the entry of the judgment. In ruling upon such application, the Tribunal shall state the reasons for its action. A motion for a stay of the judgment or the vacating of a stay granted by the Tribunal may be made to this Court or to a justice of this Court, but the motion shall show that the application to the Tribunal for relief sought is not practicable, or that the Tribunal has denied an application or has failed to afford the relief which the applicant has requested, with the reasons given by the Tribunal for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and, if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. The applicant shall file an original and four (4) copies of the motion for stay and, if the motion is opposed, shall attach legible copies of the documents specified in M.R.A.P. 8(e) for appeals under those rules.

Any stay may be conditioned upon giving bond as may be found appropriate by the Tribunal in the first instance or this Court upon review. Such bonds may be enforced by a motion in this Court without the necessity of an independent action. The motion for satisfaction of the bond and notice of the motion shall be served upon the sureties if their addresses are known.

In no event shall a stay be granted in cases where the accused attorney has defended asserting mental or physical impairment as an excuse for the behavior which is the subject of the complaint, except upon a clear and convincing showing of restoration to mental and physical health sufficient to assure the accused attorney's ability to perform his or her professional responsibilities.

(9.4) Extent of Appellate Review. Upon appeal the Court shall review the entire record and the findings and conclusions of the Tribunal, and shall render such orders as the Court may find appropriate. In so ruling, the Court shall not be bound by the rule applicable to administrative agencies to the effect that their orders must be affirmed, unless they are arbitrary and capricious and are not supported by substantial evidence, or the rule that, as in chancery, the chancellor will not be reversed on the facts unless he is manifestly wrong. Upon the conclusion of any appeal, the Court shall award costs and expenses as in its discretion appears appropriate. (Amended January 2, 1985; amended effective December 5, 1988; 9.3 amended effective as to appeals from complaint tribunals perfected from and after July 1, 1995; amended effective March 29, 2001.)

Cross References — Complaint tribunal — appeal from judgment, see Mississippi Code of 1972, § 73-3-329.

JUDICIAL DECISIONS

In general.
Construction.
Burden of proof.
Extenuating circumstances.
Scope of review.
Standard of review.
Illustrative cases.

In general.

Supreme court will not hesitate to impose substantial sanctions upon an attorney for any act which evinces want of personal honesty and integrity, or renders such attorney unworthy of public confidence. Foote v. Mississippi State Bar Ass'n, 517 So. 2d 561 (Miss. 1987).

Construction.

Fact that Bar did not raise issue of attorney's punishment at hearing stage did not mean it was estopped from doing so on appeal, since Rules of Discipline superseded all other rules or statutes pertaining to attorney discipline, and supreme court had power to render any order it deemed appropriate. Mississippi State Bar v. Blackmon, 600 So. 2d 166 (Miss. 1992).

Burden of proof.

Bar has the burden to show by clear and convincing evidence that an attorney's actions constitute professional misconduct. Gex v. Mississippi Bar, 656 So. 2d 1124 (Miss. 1995).

Extenuating circumstances.

In view of extenuating circumstances involving attorney's personal health, health of a family member, and a matter of personal distress, suspension from practice of law was not appropriate; his 120-day suspension was therefore vacated, and he was ordered to receive a public reprimand. Vining v. Mississippi State Bar Ass'n, 508 So. 2d 1047 (Miss. 1987).

Scope of review.

Supreme court reviews evidence de novo, on a case-by-case basis, sitting as triers of fact, and no substantial evidence or manifest error rule shields bar complaint tribunal from scrutiny. Foote v. Mississippi State Bar Ass'n, 517 So. 2d 561 (Miss. 1987); Hoffman v. Mississippi State Bar Ass'n, 508 So. 2d 1120 (Miss. 1987).

Standard of review.

In appeal from attorney disciplinary proceedings, supreme court examines evidence de novo, by reviewing record and findings and conclusions of complaint tribunal, and renders such orders as it deems appropriate. Terrell v. Mississippi Bar, 662 So. 2d 586 (Miss. 1995).

Punishment for violation of rules of discipline is considered and imposed on a case-by-case basis, and is not governed by a set standard; supreme court may impose sanctions either more or less severe than bar complaint tribunal. Harrison v. Mississippi Bar, 637 So. 2d 204 (Miss. 1994).

Supreme court is charged by law to inquire whether evidence in a complaint tribunal is clear and convincing, and court is not bound by any findings of fact made by the complaint tribunal; although no substantial evidence or manifest error rule shields the tribunal from scrutiny, court is not prohibited from giving deference to its findings. Mississippi State Bar v. Odom, 566 So. 2d 712 (Miss. 1990).

Illustrative cases.

Mississippi Bar Complaint Tribunal's order that an attorney be suspended from the practice of law for two years, rather than disbarred, was affirmed where he admitted that he engaged in misconduct by conducting title work and forging title documents when he did not have authority to do so, and the evidence was sufficient to find that the attorney was under significant mental stress at the time. Miss. Bar v. Derivaux, 167 So. 3d 164 (Miss. 2014).

Attorney's appeal from a decision of the Complaint Tribunal's recommendation of a public reprimand as a penalty for the violation of the Rules of Professional Conduct was appropriate because the attorney was permitted, under Miss. R. Disc. St. Bar 9, to appeal as a matter of right; thus, the denial of the State Bar's motion asking for damages for a frivolous appeal was rightfully denied. James v. Miss. Bar, 962 So. 2d 528 (Miss. 2007), writ of certiorari denied by 555 U.S. 826, 129 S. Ct. 160, 172 L. Ed. 2d 42, 2008 U.S. LEXIS 6447, 77 U.S.L.W. 3197 (2008).

Client retained an attorney in a wrongful death action after her husband was shot and killed in the presence of a police officer and the case was dismissed due to the attorney's neglect or failure to comply with proper procedure. The attorney failed to cooperate in the investigation, his disciplinary record consisted of eight informal reprimands, three private reprimands, a suspension by a federal court, and the Mississippi State Bar Complaint Tribunal found the only mitigating circumstances offered by the attorney were that he had a very busy law practice and that his membership in the Mississippi State Senate took up much of his time; the Mississippi Supreme Court held that only a public reprimand was necessary, and rejected the Bar's argument that a lengthy suspension was called for. Miss. Bar v. Walls, 890 So. 2d 875 (Miss. 2004).

On appeal from judgment of complaint tribunal imposing sixty day suspension and payment of $1,000 restitution, supreme court found attorney guilty of misconduct, but instead ordered a public reprimand and required that attorney pay restitution of $2,000. Alexander v. Mississippi Bar, 651 So. 2d 541 (Miss. 1995).

Rule 10. Pleas of nolo contendere, admissions and irrevocable resignations.

(a) Any time after the filing of the Formal Complaint, either the Complaint Tribunal or the Court may in its discretion, accept pleas of nolo contendere and admissions. Upon acceptance, the proceedings may terminate, but nothing contained herein shall prevent the further receipt of evidence for purposes of determining the final disposition to be made under Rule 8, above.

(b) Irrevocable resignations may be tendered to the Court or Complaint Tribunal at any time after Complaint Counsel's receipt of a complaint.

Procedure

(10.1) Submission and Effect. The entity to which pleas, admissions or irrevocable resignation are submitted shall direct what proceedings, if any, shall be had thereafter. If the Tribunal enters an opinion and judgment based upon a plea of nolo contendere, admission, or irrevocable resignation, the sole question to be presented by any appeal shall be the extent or absence of discipline.

(10.2) Pleas of Nolo Contendere - Contents. Such pleas need not address the factual matters alleged on the Formal Complaint. If accepted, a plea of nolo contendere shall be considered tantamount to proof of guilt on the matters charged for purposes of determining the discipline to be imposed or the disposition to be made.

(10.3) Admissions - Contents. Admissions shall fully address the factual matters alleged in the Formal Complaint, shall set out that the attorney could not defend himself on the matters admitted, and that the attorney submits to discipline on the matters admitted.

(10.4) Acceptance - Discretionary. Acceptance of a nolo contendere plea or an admission shall be discretionary. Such discretion shall include the right to accept a nolo contendere plea of the Formal Complaint and admission to the remainder.

(10.5) Irrevocable Resignation - Contents and Effect. An attorney may tender an irrevocable resignation to either the Court or the Tribunal. Such a resignation shall acknowledge each and all disciplinary matters then pending, provide the docket number or numbers, state that the attorney does not desire to defend, and request permission to resign with prejudice from the Bar. Upon receipt of such a resignation, and any response that the Bar may elect to file, the disciplinary proceedings shall terminate and either the Court or the Tribunal shall enter its order accepting the resignation, revoking the attorney's license, and barring forever thereafter the attorney's right to seek reinstatement to the privilege of practicing law in this state. Such a resignation and order shall be considered disciplinary action, and the resignation shall be considered tantamount to the proof of guilt on the matter charged.

(10.6). The purpose of sections 10.1 through 10.5 is to provide a prompt, speedy, knowledgeable, and just disposition of any disciplinary matter.

Cross References — Resignation of attorney during course of disciplinary proceedings, see Mississippi Code of 1972, § 73-3-333.

Plea of nolo contendere — consent order of suspension or disbarment, see Mississippi Code of 1972, § 73-3-371.

JUDICIAL DECISIONS

Resignation.

Pursuant to Miss. R. Disc. St. Bar 6, the Mississippi Bar filed a formal complaint seeking the disbarment of an attorney, who pled guilty in a federal district court to one count of conspiracy to corruptly influence an elected state official in violation of 18 U.S.C.S. § 371. The Mississippi Bar met its burden of proof in the attorney's disciplinary matter and was entitled to the disbarment of the attorney because (1) the attorney pled guilty to the felony offense of conspiracy to corruptly influence an elected state official in violation of 18 U.S.C.S. § 371; and (2) the attorney filed his notice of irrevocable resignation pursuant to Miss. R. Disc. St. Bar 10(b) and 10.5. In re Peters, 22 So. 3d 266 (Miss. 2009).

Pursuant to Miss. R. Disc. St. Bar 6, the Mississippi Bar filed a formal complaint seeking the disbarment of an attorney, who pled guilty in a federal district court to one count of conspiracy to corruptly influence an elected state official in violation of 18 U.S.C.S. § 371. The Mississippi Bar met its burden of proof in the attorney's disciplinary matter and was entitled to the disbarment of the attorney because (1) the attorney pled guilty to the felony offense of conspiracy to corruptly influence an elected state official in violation of 18 U.S.C.S. § 371; and (2) the attorney filed his notice of irrevocable resignation pursuant to Miss. R. Disc. St. Bar 10(b) and 10.5. Miss. Bar v. Langston, 987 So. 2d 936 (Miss. 2008); Miss. Bar v. Balducci, 987 So. 2d 933 (Miss. 2008).

Attorney was disbarred under Miss. R. Disc. St. Bar 6 because he filed a Notice of Irrevocable Resignation under Miss. R. Disc. St. Bar 10.5. State Bar v. Naugle, 968 So. 2d 1266 (Miss. 2007).

Attorney's disbarment was appropriate because the attorney had pled guilty to the crime of accessory after the fact; because of the attorney's filing of her notice of irrevocable resignation in compliance with Miss. R. Disc. St. Bar 10.5, the supreme court was required to order her disbarment. Miss. Bar v. Smith-Miller, 962 So. 2d 545 (Miss. 2007).

Where an attorney was convicted of conspiracy to commit mail fraud and mail fraud, the court accepted the attorney's resignation from the Mississippi Bar and terminated all disciplinary proceedings. Miss. Bar v. Ellington, 904 So. 2d 107 (Miss. 2004).

Rule 11. Effect of suspension, disbarment, resignation, incapacity or death.

(a) An appeal shall operate as a supersedeas except as to any judgment of disbarment or suspension entered under Rule 6 or 10. A person disbarred or suspended shall not be permitted to practice law until restored to that privilege by the Court by way of an appeal or petition for reinstatement.

(b) An attorney suspended may be placed on probation or specified terms and may continue to practice law thereunder.

(c) A disbarred, suspended or resigned attorney shall: (1) notify all clients of his disbarment, suspension or resignation and his consequent inability to act as an attorney after the effective date of his disbarment, suspension or resignation; (2) notify each client involved in pending litigation or administrative proceedings and the attorney or attorneys for each adverse party in such proceedings, of his disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date of his disbarment, suspension or resignation; (3) advise each client promptly to substitute another attorney or attorneys in his place or to seek legal advice elsewhere; (4) notify all effected courts and agencies of his disbarment, suspension or resignation and consequent inability to act as an attorney after the effective date thereof; and (5) give such other notice as the disciplinary agency last having jurisdiction may direct in the public interest.

(d) In the event of resignation, disbarment, or suspension, receivers may be appointed by the Committee on Complaints for the limited purpose of making an inventory and disposing of the attorney's files, cases and practice. Neither receivers nor their associates shall be permitted to become counsel for any parties in the cases and files inventoried, but they shall be permitted to take such actions as appear necessary to protect the interests of the clients with pending cases and the interests of the attorney. The Committee on Professional Responsibility shall receive and review reports from the receivers and shall monitor compliance with the terms of any probation, suspension or disbarment.

(e) Failure to comply with any order of discipline may be punished as a contempt and may constitute a separate ground for disciplinary action.

(f) Whenever an attorney has been transferred to inactive status because of incapacity or disability, or disappears or dies, and no partner, or other responsible party capable of conducting the attorney's affairs is known to exist, the Court, or any judge having probate jurisdiction in the district in which the attorney maintains his practice, upon proper proof of the fact, will appoint an attorney or attorneys as receivers to inventory the files of the inactive, missing or deceased attorney and to take such actions as seems indicated to protect the interest of the inactive, missing or deceased attorney and his clients, and to generally carry out the functions described in Rule 11(d).

(g) Any attorney appointed receiver under this rule shall not be permitted to disclose any information contained in any files inventoried without the consent of the client to whom such file relates, except as necessary to carry out the orders of the appointing agency or court.

Procedure

(11.1) Notice to Be Given and Action to Be Taken. When an order of disbarment or an order of suspension for an indefinite period or a suspension without probation or a determination of incapacity or a resignation or proof of death is entered, the receivers, either with or without assistance from the suspended or disbarred person, shall immediately take such action as may be necessary to protect the interests of the clients and the attorney. This action shall include, but need not be limited to, giving notice that the attorney is disqualified to all clients in pending cases, all courts and agencies affected, all co-counsel in pending cases and all opposing counsel in pending matters, or, in the absence of such counsel, the opposing parties. The receivers shall offer to deliver, and where appropriate, shall deliver, to all clients being represented in pending matters, any papers or any other property to which the clients are entitled and shall notify the clients and any counsel representing them, of a suitable time and place where the papers or other property may be obtained. On motion of the attorney, his client, or other litigants, the Court or disciplinary agency last having jurisdiction of the attorney, shall have broad discretion in allowing the attorney to continue as the attorney of record in a particular case.

(11.2) Questions Pertaining to Closing a Practice. The receivers shall present to the agency last having jurisdiction of the disciplinary matter or the appropriate chancery court, any question upon which direction is needed. Nothing contained herein shall be construed to limit the inherent and statutory powers of the chancery court.

(11.3) Reports by Receivers. Upon the closing of the practice, the receivers shall tender appropriate reports to the Committee on Professional Responsibility and to the entity which last had jurisdiction of the disciplinary matter. Where appropriate or necessary, interim reports shall be tendered.

(11.4) Law Partners - Continuance of Representation. If the client agrees, the law partners of a suspended or disbarred attorney may continue to represent any client affected by the suspension or disbarment, but notice thereof should be given as set out above.

(11.5) Costs and Expenses. All costs and expenses incurred by the receivers in the closing of the practice, except as normally payable by the client, shall be paid by the Bar. The Bar shall be entitled to recover of and from the suspended or disbarred attorney, expenses incurred in connection with the receivers. (Amended November 16, 1995.)

Cross References — Resignation of attorney during course of disciplinary proceedings, see Mississippi Code of 1972, § 73-3-333.

Modification or termination of suspension, see Mississippi Code of 1972, § 73-3-335.

JUDICIAL DECISIONS

Constitutionality.
Disbarment.

Constitutionality.

Attorney disciplinary procedures did not violate sole practitioners' freedom of association, right to equal protection, or right to due process by virtue of provision allowing, with client's agreement, continuation of representation by law partners of a suspended or disbarred attorney. Hall v. Mississippi Bar, 631 So. 2d 120 (Miss. 1993).

Disbarment.

Where the attorney was found guilty of the crime of sale of marijuana within a correctional facility in violation of Miss. Code Ann. § 47-5-198, the Mississippi Bar filed a formal complaint against him pursuant to Miss. R. Disc. St. Bar 6. The Supreme Court of Mississippi disbarred the attorney from the practice of law, and ordered him to comply with all other requirements applicable to disbarred attorneys pursuant to Miss. R. Disc. St. Bar 11. Miss. Bar v. Jackson, 987 So. 2d 930 (Miss. 2008).

Rule 12. Reinstatement.

(a) No person disbarred or suspended for a period of six (6) months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court.

(b) Reinstatement to the practice of law following any suspension shall be only upon proof of compliance with any such sanctions.

(c) Reinstatement to the practice of law following an attorney's transfer to disability inactive status is governed by Rule 23 of these Rules.

(d) An attorney who has been disbarred for conviction of a felony criminal offense which conviction occurred after April 4, 2002, in a court of this state or any other state, or a court of the United States for any felony crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, the sale or distribution of a controlled substance, or an attempt, conspiracy or solicitation of another to commit such a crime, shall be ineligible for reinstatement to the practice of law.

(e) An attorney who has been disbarred based on an underlying civil judgment pursuant to Rule 6(c) and (d) of these Rules shall be ineligible for reinstatement to the practice of law. (Amended effective August 12, 1992; April 4, 2002; July 1, 2019.)

Procedure.

(12.1) Disbarments. The petition for reinstatement shall not be filed until five (5) years after the date the order of disbarment became final.

(12.2) Suspensions. A petition for reinstatement shall be required in all cases of suspension for a period of six (6) months or more. In cases of suspension pending satisfaction of conditions precedent, reinstatement shall not be permitted except upon proof that the conditions have been met.

(12.3) Suspensions - Revocation of Probation. Probation may be revoked upon clear and convincing proof that the attorney has failed to meet the terms of the probation. It shall be the duty of Complaint Counsel to monitor such suspensions with probation, to receive any reports which the attorney may be required to submit, and to take such action as may be appropriate in the circumstances.

(12.4) Suspensions - Time for Filing Petitions for Reinstatement. A suspended attorney shall not file a petition for reinstatement until the expiration of the period of suspension and all conditions precedent are met.

(12.5) Examination Requirements. No sooner than six (6) months prior to the time of eligibility for reinstatement of an attorney suspended for six months or longer, the petitioning attorney shall take the Multi-State Professional Responsibility Exam, as prepared by the National Conference of Bar Examiners, and achieve the score required for admission of new attorneys to the Bar. No sooner than six (6) months prior to the time of eligibility for reinstatement, a disbarred attorney shall be required to take and pass the complete Bar examination administered by the Mississippi Board of Bar Admissions and achieve the score required for admission of new attorneys to the Bar and the Multi-State Professional Responsibility Exam with the score required for admission of new attorneys to the Bar.

(12.6) Effect - Adverse Determination. If a petition for reinstatement is denied or otherwise dismissed, no other petition shall be filed until one (1) year after the date of the prior adverse decision.

(12.7) Contents of Reinstatement Petitions. All reinstatement petitions shall be addressed to the Court, shall state the cause or causes for suspension or disbarment, give the names and current addresses of all persons, parties, firms, or legal entities who suffered pecuniary loss or other harm due to the improper conduct, demonstrate the making of full amends and restitution, give specific reasons justifying reinstatement, and discuss in detail the attorney's rehabilitation of the requisite moral character and legal learning to be reinstated to the privilege of practicing law. Upon filing, the petition shall be served upon the Bar, and an investigatory fee of $1,000.00 shall be paid to the Bar, in addition to any other sum due the Bar. The matters set out in this paragraph are mandatory for inclusion in the reinstatement petition.

(12.8) Board of Commissioners for the Bar. Upon receipt of the reinstatement petition, Complaint Counsel shall commence investigation within thirty (30) days. Upon completion of the investigation or within one hundred twenty (120) days from the commencement of the investigation, whichever occurs first, the Board of Bar Commissioners shall fully answer the petition.

The Board shall determine, based upon Complaint Counsel's investigation, whether the Bar supports, or objects to, the attorney's reinstatement. Upon filing of the Bar's answer, the proceedings shall continue as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require.

(12.9) Matter of Public Record. All petitions for reinstatement shall be matters of public record, Rule 15 notwithstanding. (12.5 added effective April 9, 1987; 12.8 amended March 12, 1990; 12.2, 12.4 and 12.5 amended effective August 12, 1992; 12.3 amended November 16, 1995; amended July 1, 2019.)

Cross References — Reinstatement, see Mississippi Code of 1972, § 73-3-337.

JUDICIAL DECISIONS

Construction.
Authority of court.
Contempt.
Drug offenses.
Embezzlement.
Failure to comply.
Felony conviction.
Grounds for reinstatement note applies to Rule 12.7.
Procedure.
Rehabilitation.
Reinstatement denied.
Reinstatement granted.
— Jurisdictional requirements.
Time limits.
Illustrative cases.

Construction.

Plain meaning of phrase "full amends and restitution" means exactly what it says: attorney must make complete and total restitution to all parties who suffered a pecuniary loss; these words are clear and unambiguous, and proper construction of them requires interpretation as written. In re Baker, 649 So. 2d 850 (Miss. 1995).

Fundamental question to be addressed before reinstatement is the attorney's rehabilitation in conduct and character since disbarment; focus should not be on attorney's character at the time the offense was committed, but on his character since the time the offense was committed. In re Nixon, 618 So. 2d 1283 (Miss. 1993).

Burden of suspended attorney petitioning for reinstatement is not the same or as great as that demanded of one who has been disbarred; implicit in judgment of suspension, stopping short of disbarment, is that attorney's character has not been shown so deficient that proof of general moral and professional rehabilitation is required. Haimes v. Mississippi State Bar, 551 So. 2d 910 (Miss. 1989).

Authority of court.

Even though Rules of Discipline provide for reinstatement through petition, an order of automatic reinstatement is within scope of supreme court's exclusive and inherent jurisdiction of attorney discipline matters. Broome v. Mississippi Bar, 603 So. 2d 349 (Miss. 1992).

Contempt.

Attorney disbarred due to misdemeanor contempt of court, resulting from failure to provide information to grand jury, was reinstated subject to passage of special ethics exam. Holmes v. Mississippi Bar, 602 So. 2d 847 (Miss. 1992).

Drug offenses.

Disbarred attorney's petition for reinstatement was denied, where his conviction was for that of distributing, not merely using, unlawful drugs, and he failed to demonstrate the requisite moral character to practice law. In re Massey, 670 So. 2d 843 (Miss. 1996).

Attorney convicted of cocaine possession was reinstated, where he fulfilled all requirements of reinstatement and was subject to condition that he submit to random drug screening for a period of two years. Mississippi State Bar v. Gautier, 538 So. 2d 772 (Miss. 1989).

Embezzlement.

Attorney who embezzled money from his former employer demonstrated requisite rehabilitation in conduct and moral character since his disbarment and would be reinstated to practice law, contingent upon passage of Mississippi Bar Exam and Multi-State Professional Responsibility Exam. In re Medley, 687 So. 2d 1219 (Miss. 1997).

Attorney convicted of two counts of felonious embezzlement from his clients met his burden of proving that he had rehabilitated himself and re-established requisite moral character; he was thus reinstated, on condition that he pay $1,500 to comply with "full amends and restitution" requirement, and that he successfully take entire Mississippi Bar Exam and Professional Responsibility Exam. In re Baker, 649 So. 2d 850 (Miss. 1995).

Failure to comply.

Attorney's petition for reinstatement was insufficient and dismissed, given that the attorney failed to state the cause for suspension, failed to give the name or address of anyone who suffered pecuniary loss due to his improper conduct, and failed to demonstrate he made full restitution, had the necessary moral character to practice law, and possessed the requisite legal education to be reinstated. Derivaux v. Miss. Bar, 144 So. 3d 1246 (Miss. 2014).

Because an attorney failed to satisfy the conditions of his suspension under Miss. R. Disc. St. Bar 12.2 and 12.5 and his petition was premature under Miss. R. Disc. St. Bar 12.4, his petition for reinstatement to the practice of law was denied. In re Petition of Shah, 5 So. 3d 352 (Miss. 2008).

Attorney's petition for reinstatement to the practice of law was denied because evidence indicated that the attorney had attempted to mislead the Bar and the court that he possessed the requisite moral character, and that the Bar, through limited investigation, had accepted his averments. In re Prisock, 5 So. 3d 319 (Miss. 2008).

An attorney would not be reinstated to the practice of law since it appeared that he lacked the necessary moral character where (1) only four months after he was suspended, he incorrectly stated on his application for a real estate broker's license that he had never had a license suspended or revoked, (2) he was previously assessed with the costs and expenses of a proceeding and neglected to pay until almost two years after the assessment, and (3) he was also previously required to apologize, in writing, to the bar and tribunal for an unnecessary hearing, but the bar never received such an apology. In re Asher, 733 So. 2d 815 (Miss. 1999).

Attorney's petition for reinstatement was denied, where he failed to fully comply with court order regarding submission of affidavits and possibly still owed restitution to his former law firm, and where court remained unconvinced that attorney had rehabilitated his character. In re Tucker, 656 So. 2d 799 (Miss. 1995).

Petitioner failed to list parties who suffered pecuniary loss due to his improper conduct and made no showing of full amends and restitution to those persons, and he stated no reason justifying reinstatement and failed to reference requisite moral character or provide information regarding requisite legal learning, and as these defects were jurisdictional, petitioner was denied reinstatement. Burgin v. Mississippi State Bar, 453 So. 2d 689 (Miss. 1984).

Felony conviction.

Attorney disbarred from practice of law, following conviction for felony, was reinstated on condition that he make full amends and restitution, and that he successfully take and pass complete Bar Examination as well as Multi-State Professional Responsibility Exam. In re Burgin, 654 So. 2d 40 (Miss. 1995).

Grounds for reinstatement note applies to Rule 12.7.

Supreme court's referral of the attorney's petition for reinstatement to the Complaint Tribunal was proper even though the attorney was eligible for reinstatement under Miss. R. Disc. St. Bar 12, because his petition before the supreme court failed to meet the requisite burden of proof for reinstatement set forth in Rule 12.7. In re Shelton, 987 So. 2d 898 (Miss. 2006).

Where an attorney was disbarred after being convicted of felony cocaine possession, the attorney did not satisfy the rules for reinstatement under Miss. R. Disc. St. Bar 12.7, as the attorney failed to present documentation of the rehabilitation treatment that the attorney had received, most of the attorney's involvement in charitable and community activities was by financial contributions, and the attorney, in contravention of the order of disbarment, continued to hold himself out as an attorney. In re Baldwin, 890 So. 2d 56 (Miss. 2003).

Pleading of conclusions was insufficient to satisfy requirements of this rule; such failures were jurisdictional, and revealed that petitioner had not carried burden of proving himself worthy of reinstatement. Jennings v. Mississippi State Bar, 533 So. 2d 443 (Miss. 1988).

Procedure.

Disbarred attorney's petition for reinstatement, filed on October 18, 2007, was dismissed as premature because the three-year waiting period for the petition under Miss. R. Disc. 12.1 began to run on June 23, 2005, the date that the court filed its opinion, and not May 27, 2004, the date of his suspension by the complaint tribunal. In re Petition for Reinstatement of Shah, 987 So. 2d 964 (Miss. 2008).

Second petition for reinstatement filed by an attorney who was disbarred after pleading guilty to felonious possession of cocaine was dismissed with prejudice where the scant one-page petition, which contained only generic statements, lacked both content and substance, and failed to adequately address each of the requirements set forth in Miss. R. Disc. St. Bar 12.5, 12.6, and 12.7. In re Petition ex rel. Baldwin, 987 So. 2d 961 (Miss. 2008).

Attorney's petition to modify order of suspension was denied; no petition for rehearing had been filed and judgment had become final, and his petition amounted to a petition for reinstatement which, under this rule, was not to be filed until expiration of the period of suspension. Mississippi State Bar v. Young, 523 So. 2d 323 (Miss. 1988).

Rehabilitation.

Disbarred attorney's petition for reinstatement was denied; although the attorney, who had pleaded guilty in federal court to one count of conspiracy to commit extortion, showed some rehabilitation and outward improvement in his conduct, the attorney failed to show the requisite rehabilitated moral character to be reinstated. Stewart v. Miss. Bar, 5 So. 3d 344 (Miss. 2008).

Attorney's petition for reinstatement to the practice of law was denied because the attorney's petition was lacking in any proof that the attorney possessed a firm resolve to live a correct life which would have justified the court granting the petition and reinstating the attorney's license under Miss. R. Disc. St. Bar 12 because (1) the attorney continued to show no remorse for the attorney's actions, (2) many of the letters of recommendation which were submitted on the attorney's behalf did not acknowledge the gravity of the attorney's offenses, nor did the attorney's own petition, (3) the attorney failed to become involved in charities on a more personal level, and the attorney's claim that several of these charities already had ample volunteers was unconvincing, (4) the attorney's employment was minimal, and (5) the attorney's petition failed to provide clear and convincing evidence of rehabilitation justifying reinstatement. In re McGuire, 849 So. 2d 880 (Miss. 2003).

Disbarred attorney's petition for reinstatement was denied where the attorney worked during disbarment in the law office in which the attorney had formerly practiced; the issue of unauthorized practice of law is a matter to be considered in reinstatement proceedings, and, although a disbarred or suspended lawyer may work as a clerk or paralegal under certain stringent guidelines, such a lawyer may not work for a former firm. In re Parsons, 890 So. 2d 40 (Miss. 2003).

Attorney convicted of federal money laundering failed to satisfy requisite burden to justify court's reinstatement of his license to practice law by neglecting to engage in any type of community service, mischaraterizing the severity of the offense; Letters of recommendation he presented in support of his petition expressed chagrin over his treatment by the court, and ignored the severity level of the committed offense. McGuire v. The Miss. Bar, 798 So. 2d 476 (Miss. 2001).

Fundamental issue posed by a petition for reinstatement is the attorney's rehabilitation in conduct and character since disbarment or suspension; burden is on petitioner to prove that he has been rehabilitated sufficiently to entitle him to reinstatement. In re Robb, 702 So. 2d 423 (Miss. 1997).

Petitioner failed to meet required burden of proof that he was fully rehabilitated during suspension from practice of law, where his involvement in alleged assault with possession of concealed weapon, and suspicious nature of circumstances surrounding dismissal of those charges, warranted full evidentiary hearing. In re Robb, 702 So. 2d 423 (Miss. 1997).

Reinstatement denied.

Disbarred attorney failed to meet the Miss. R. Disc. St. Bar 12 jurisdictional requirements for reinstatement and had not met his burden of proving that he had rehabilitated his conduct and moral character where his disregard of Miss. Code Ann. § 79-11-509(1)(f) and the Secretary of State's direction regarding his prior felony conviction and his executive director role at a presidential home and library contradicted his duty and obligation to uphold the laws of the State and did not conform with the recognized rules of correct conduct or the high standards to which lawyers were held. Stewart v. Miss. Bar, — So. 3d —, 2019 Miss. LEXIS 266 (Miss. July 25, 2019).

Suspended attorney had not satisfied the Miss. R. Disc. St. Bar 12.7 jurisdictional requirements for reinstatement where he had not provided the current addresses of all parties who suffered pecuniary loss due to the improper mishandling of funds, and although his insurance carrier had paid a settlement to the clients who suffered pecuniary losses, it was clear from the petition for reinstatement that they were not made whole by the settlement. Stanford v. Miss. Bar, — So. 3d —, 2019 Miss. LEXIS 21 (Miss. Jan. 17, 2019).

Attorney's petition for reinstatement was denied because it failed to provide clear description of improper actions that led to suspension, and while the attorney referenced the client who suffered a pecuniary loss, the attorney's intent to make amends by paying the client from his personal account did not negate the attorney's failure to prosecute, hiding that the case had been dismissed, and making the client believe he received a settlement. Anderson v. Miss. Bar, 269 So. 3d 109 (Miss. 2018).

In a case in which appellant filed a petition for reinstatement to the practice of law following a ten-month suspension, the Supreme Court concluded that appellant did not successfully show that she met the jurisdictional requirements outlined in Miss. R. Disc. St. Bar 12. As appellant failed to meet these requirements, the Supreme Court was not convinced that appellant exhibited both the moral and professional rehabilitation necessary to be reinstated. Russell v. Miss. Bar, 255 So. 3d 136 (Miss. 2017).

Attorney was not entitled to reinstatement because the attorney's petition failed to include the cause for her suspension in Mississippi or any information on the persons or entities who suffered pecuniary loss due to her conduct and said nothing about her moral character. Caldwell v. Miss. Bar, 118 So. 3d 549 (Miss. 2012).

Reinstatement granted.

Attorney was entitled to reinstatement after being suspended for commingling client funds because the attorney did not have an intent to steal, had no prior disciplinary history, did not lie to clients or to disciplinary authorities, made restitution, and hired an accountant or bookkeeper to institute a system of banking, accounting, and bookkeeping in accordance with Miss. R. Prof. Conduct 1.15. Ogletree v. Miss. Bar, 269 So. 3d 102 (Miss. 2018).

Attorney's petition for reinstatement was granted where although his commingling of funds was egregious, he provided sufficient detail about his violations and named those who suffered pecuniary loss, repaid the misappropriated funds with interest and paid the costs incurred, he had not engaged in the unauthorized practice of law during his suspension, he participated in a lawyer assistance program, and he had engaged in the requisite legal learning. Gaines v. Miss. Bar, 268 So. 3d 484 (Miss. 2018).

Attorney was reinstated to the Mississippi Bar, following a two-year suspension, because the attorney complied with the requirements for reinstatement and demonstrated full rehabilitation along with the requisite moral character to practice law. The attorney acknowledged the behavior which led to the suspension, remitted full restitution to those who suffered pecuniary loss, and provided evidence of the requisite moral character. Derivaux v. Miss. Bar, 226 So. 3d 97 (Miss. 2016).

Suspended criminal law attorney's petition, along with her testimony and letters of recommendation showing how she had been employed since her suspension and her extensive volunteer work for her church, presented substantial evidence that she had achieved the moral and professional rehabilitation necessary to return to the practice of law under Miss. R. Disc. St. Bar 12. In re Thompson v. Miss. Bar, 156 So. 3d 226 (Miss. 2013).

Attorney's petition under Miss. R. Disc. St. Bar 12 for reinstatement to practice law in Mississippi was granted because the attorney had shown sufficiently that he was rehabilitated and had the requisite moral character to practice law in the State, the attorney accepted responsibility and expressed remorse for his actions throughout his petitions and deposition, and the attorney submitted that he had learned a valuable lesson over the past six years; letters of support, while laudable and relevant, were not necessarily dispositive of moral character and were not required by Miss. R. Disc. St. Bar 12, and the attorney attached to his petition a document from the National Conference of Bar Examiners, showing that he had scored a 90 on the Multistate Professional Responsibility Examination, well above the required score of 80 under Miss. R. Disc. St. Bar 12.5. Azki Shah v. Miss. Bar, 83 So. 3d 1274 (Miss. 2011).

Conditional grant of the attorney's petition for reinstatement to the practice of law contingent upon the attorney's taking and passing the Mississippi Bar Examination was appropriate because the attorney had proven by clear and convincing evidence that he had rehabilitated himself and was worthy of reinstatement to the practice of law. Daly v. Miss. Bar, 83 So. 3d 1262 (Miss. 2011).

Based on the evidence provided, the Mississippi Supreme Court found that the suspended attorney proved that he had rehabilitated himself and possessed the moral character necessary for reinstatement to the practice of law, Miss. R. Disc. St. Bar 13; the attorney had to file monthly reports of the results of drug and alcohol screens. In re Hodges, 19 So. 3d 656 (Miss. 2009).

Attorney met the requirements for reinstatement under Miss. R. Disc. St. Bar 12.7, given that (1) the attorney's plea of guilty to a charge of bribery of a public official, for purposes of Miss. R. Disc. St. Bar 6(a), was not accepted by the trial court and the trial court dismissed the charges finding that there was a strong doubt as to the State's ability to carry its burden of proof, (2) the only basis for the attorney's suspension was the plea to the charge that was dismissed, (3) there was no evidence that anyone besides the attorney suffered pecuniary loss, (4) the complaint tribunal found no evidence that the attorney ever lacked the requisite moral character to practice law, many people testified as to his character and recommended reinstatement, and the attorney testified that he ministered to youth in his community, and (5) the complaint tribunal found no reason to suspect that the attorney lacked the requisite legal education to practice law, plus the attorney had attended various seminars that offered continuing legal education credit and reviewed the court's hand-down lists on the court's website, and the tribunal recommended, pursuant to Miss. R. Disc. St. Bar 12.5, that the attorney not be required to take the Multi-State Professional Responsibility Exam because there was no evidence that he was lacking in ethical responsibility; the court accepted the recommendations and reinstated the attorney to the practice of law. In re Shelton, 987 So. 2d 938 (Miss. 2008).

In the petition for reinstatement, the attorney stated the cause for his suspension was inattention to matters as a result of substance abuse; he provided the names and addresses of the persons who suffered loss as a result of his misconduct; the attorney made restitution to the clients. he attorney showed true remorse a result of his experience in a drug treatment and alcohol program; the letters of recommendation he provided showed that he possessed the necessary moral character for the practice of law; the attorney also kept up with developments in the law, and passed the Multi-State Professional Responsibility Exam. The attorney satisfied the five jurisdictional requirements for reinstatement under Miss. R. Disc. St. Bar 12. In re Reinstatement of Kelly, 987 So. 2d 925 (Miss. 2008).

State supreme court granted an attorney's petition for reinstatement pursuant to Miss. R. Disc. St. Bar 12 because, inter alia, the attorney acknowledged that his actions violated Miss. R. Prof. Conduct 1.15 and Miss. R. Prof. Conduct 8.4(a), (c), and (d), and the attorney stated that he had reimbursed the fund from which he had withheld the money. In re Coleman, 949 So. 2d 680 (Miss. 2006).

Attorney's petition to reinstate his license to practice law and be readmitted to the Mississippi Bar, subject to the following conditions: that he continued to participate in a lawyers' assistance program and that he open a new trust/escrow account for conducting his law practice and that he submit the monthly bank statements for such account to the Mississippi Bar's General Counsel for his review for a period of twelve months following his resumption of the practice of law. In re Flautt, 890 So. 2d 928 (Miss. 2004).

An attorney was entitled to reinstatement, contingent upon his passage of the Mississippi Bar Examination and the Multi-State Professional Responsibility Exam, where (1) the petition clearly stated the causes for the attorney's disbarment, (2) the criminal violation for which the attorney was convicted did not directly involve pecuniary loss to any person, party, firm or legal entity, and no restitution of any type was ordered, (3) the attorney was ordered to pay and did pay the bar's costs and expenses associated with its investigation and prosecution of the disbarment proceeding, (4) the attorney listed sufficient reasons justifying his reinstatement, (5) the attorney established the requisite moral character, and (6) the attorney established that, during the period of his disbarment, he had read various periodicals and articles concerning matters of legal interest to him, although not on a scheduled basis. In re Parsons, 797 So. 2d 203 (Miss. 2000).

A petition for reinstatement to the practice of law was granted to an attorney who was suspended for six months based upon the United States Bankruptcy Court's issuance of an injunction that prohibited him from practicing in that court for a specified period of time where the attorney (1) paid an amount to a client as order by the Bankruptcy Court, (2) paid the bar's costs and expenses involved in its investigation and prosecution of the instant disciplinary proceeding and the investigatory fee in connection with his petition for reinstatment, (3) showed the requisite moral character, (4) satisfied Rule 11(c), (5) retook and passed the Multi-State Professional Responsibility portion of the bar exam, (6) appeared to be mentally and emotionally stable and did not appear to be suffering from any medical problems, and (7) intended to resume private practice and specialize in the area of criminal law, rather than doing bankruptcy work. In re Shah, 797 So. 2d 199 (Miss. 2000).

The court would grant a petition for reinstatement where (1) the attorney made restitution as required and submitted his investigatory fee, (2) following his suspension, he promptly closed his practice, notified all clients and others of his suspension, provided new counsel with all required information, returned documents to clients, and filed an affidavit attesting to his completion of these acts, (3) he offered numerous letters of recommendation, (4) he obtained the requisite legal education for reinstatement, and (5) he met the jurisdictional requirements for reinstatement. In re Steele, 722 So. 2d 662 (Miss. 1998).

Attorney met conditions for reinstatement where he paid required restitution to his former client in conjunction with settling client's threatened malpractice action, and client understood that $5,000 settlement included $1,750 in restitution owed by attorney. In re Pace, 699 So. 2d 593 (Miss. 1997).

— Jurisdictional requirements.

State supreme court conditionally granted attorney's reinstatement to the bar upon passing the Mississippi Bar Exam and the Multi-State Professional Responsibility Exam, as the attorney satisfied the jurisdictional requirements and met his burden of proving that he had rehabilitated himself and had the requisite moral character as required by Miss. R. Disc. State Bar 12. The attorney identified the reasons for his disbarment, showed proof of payment on all ordered costs, had 66 letters of recommendation from community members, and the state bar conditionally supported his reinstatement. In re McGuire, 912 So. 2d 902 (Miss. 2005).

Denial of an attorney's petition for reinstatement to the practice of law was proper where he failed to give the names and addresses of those who had suffered pecuniary loss as a result of his improper conduct and failed to offer letters of recommendation. Further, the following are five jurisdictional requirements which will henceforth apply to Miss. R. Disc. St. Bar 12 reinstatement petitions: The petitioner must: (1) state the cause or causes for suspension or disbarment; (2) give the name and current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to the improper conduct; (3) make full amends and restitution, (4) show that he has the necessary moral character for the practice of law; and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law. In re Benson, 890 So. 2d 888 (Miss. 2004).

Time limits.

Attorney's disbarment was not retroactive to date of his suspension, for purposes of calculating three year waiting period required before filing a petition for reinstatement, where attorney sought a stay of the final order and thus delay in entry of final order was due to his own initiative. Mississippi State Bar v. Nixon, 562 So. 2d 1288 (Miss. 1990).

Three-year time period governing petitions for reinstatement began to run from date of final order of disbarment, and there was no "relation back" to date of initial order which suspended petitioner from practice of law. McIntosh v. Mississippi State Bar, 449 So. 2d 1203 (Miss. 1984).

Illustrative cases.

Given that no complaint tribunal was convened, or that no request was made by the State Bar in its formal complaint that a suspended attorney be required to take the Multi-State Professional Responsibility Exam (MPRE), the Supreme Court concluded that the attorney was not required to take the MPRE prior to petitioning for reinstatement. Miss. Bar v. Gibbons, — So. 3d —, 2019 Miss. LEXIS 354 (Miss. Oct. 3, 2019).

Attorney failed to satisfy the necessary requirements for reinstatement to the privilege of practicing law, under Miss. R. Disc. St. Bar 12, on both procedural and substantive grounds because (1) the attorney had not satisfied the requirement that he state the cause or causes for suspension because, in his petition for reinstatement, the attorney merely listed the Mississippi Rules of Professional Conduct which he was found to have violated; (2) the attorney's petition for reinstatement failed to give the name and current address of all persons, parties, firms, or legal entities who suffered pecuniary loss due to his misconduct; and (3) the attorney failed to offer clear and convincing evidence to satisfy the burden of proving that he had rehabilitated himself and reestablished the requisite moral character sufficient to entitle him to reinstatement because the scant evidence of community service and a single letter regarding moral character were contextually inadequate in view of the severity of the attorney's prior violations. In re Asher, 987 So. 2d 954 (Miss. 2008).

Petitioner attorney failed to show that he met all jurisdictional requirements of the Rule; until the attorney could prove that the financial loss suffered by one of the financial institutions involved was equal to the amount of restitution paid to the FDIC, he failed to meet his burden of proof, therefore, his petition for reinstatement to the practice of law was denied. In re Watkins, 849 So. 2d 843 (Miss. 2002).

On condition that he retake and pass the Mississippi Bar Exam and the Multi-State Professional Responsibility Exam, a petition to reinstate an attorney was granted where (1) the petition clearly stated the causes for the attorney's disbarment, (2) the criminal violation for which the attorney was convicted did not directly involve pecuniary loss to any person, party, firm or legal entity, and no restitution was ordered, (3) the attorney was ordered to pay and did pay the bar's costs and expenses associated with its investigation and prosecution of the disbarment proceeding, (4) in support of his petition for reinstatement, the attorney listed sufficient reasons justifying his reinstatement, and (5) the attorney established the requisite moral character. In re Parsons, 797 So. 2d 203 (Miss. 2000).

An attorney was entitled to reinstatement to the bar by complying with all necessary requirements for reinstatement where (1) he included a list of names and addresses of persons, parties, firms, or legal entities who suffered pecuniary loss due to his misconduct; (2) he made full amends and restitution; (3) he established good moral character by showing his church activities, explaining his treatment by a local psychiatrist, and expressing remorse for his misconduct, and (4) he showed that he had the requisite legal learning. In re Smith, 758 So. 2d 396 (Miss. 1999).

Where attorney, during a period when he was suspended from the practice of law, represented a client, converted that client's funds, and then became unavailable to that client, attorney's actions merited disbarment, and attorney was prohibited from applying for reinstatement for a period of three years. Mississippi Bar v. Carter, 678 So. 2d 981 (Miss. 1996).

Attorney convicted in federal court for crime of falsifying a document would be reinstated to practice law upon earning a passing score on examinations required by rule. In re McHann, 691 So. 2d 422 (Miss. 1997).

Rule 13. Reciprocal Discipline.

(a) Upon being disciplined in another jurisdiction, an attorney admitted to practice in the State of Mississippi shall forthwith, but no later than 15 days upon the imposition of such discipline, provide Complaint Counsel a certified copy of the discipline. Failure to provide the certified copy forthwith shall, upon petition by Complaint Counsel, result in the immediate suspension of the attorney pending final resolution by the Court. The three (3) year limitations period provided in Rule 4(d) of these Rules shall not begin to run until the Bar has been given written notice of the discipline imposed by a Bar or court of another jurisdiction.

(b) Upon notification from any source that an attorney admitted to practice in the State of Mississippi has been disciplined in another jurisdiction, Complaint Counsel shall obtain a certified copy of the order and file it with the Court. A final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the State of Mississippi. The sole issue to be determined in the disciplinary proceeding in the State of Mississippi shall be the extent of the final discipline to be imposed upon the attorney in this State, which may be more or less severe than the discipline imposed by the other jurisdiction. (Amended July 1, 2019.)

Procedure

(13.1). Upon receipt by Complaint Counsel of a certified copy of an order that an attorney admitted to practice in the State of Mississippi has been disciplined in another jurisdiction, Complaint Counsel shall present certified copies to the Court by filing a complaint and serving it upon the attorney wherein the sole issue in a disciplinary case shall be the extent of final discipline to be imposed on the attorney in the State of Mississippi, which discipline may be less or more severe than the discipline imposed by the other jurisdiction. Service upon a resident attorney shall be made consistent with Mississippi Rule of Civil Procedure 4(c). Service upon a non-resident attorney shall be made consistent with Rule 16 of these Rules. The attorney may file an answer to the complaint within thirty (30) days of service of the complaint.

(13.2). The Court shall impose discipline upon the attorney unless the attorney demonstrates or the Court finds that it clearly appears upon the face of the record from which the discipline is predicated that:

(a) The procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(b) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(c) The discipline imposed would result in grave injustice or be offensive to the public policy of the State of Mississippi.

(13.3). The burden shall be upon the attorney seeking different action in the State of Mississippi to demonstrate that the imposition of the same discipline is not appropriate. (Amended effective April 5, 1994; July 1, 2019.)

Cross References — Disbarment or suspension in another jurisdiction, see Mississippi Code of 1972, § 73-3-341.

JUDICIAL DECISIONS

Appropriate sanctions.
Bankruptcy court.
Federal courts.
Procedure.
State court.

Appropriate sanctions.

Supreme Court of Mississippi found that the disbarment of an attorney was appropriate, based on the attorney's disbarment by consent in the District of Columbia, because, after being personally served, the attorney failed to respond, which reasonably demonstrated the attorney's intention not to contest the imposition of reciprocal discipline. Moreover, the court found that no extraordinary circumstances compelled, justified, or supported variance from the District of Columbia's discipline. Miss. Bar v. Colvin, — So. 3d —, 2020 Miss. LEXIS 7 (Miss. Jan. 14, 2020).

Supreme Court of Mississippi fully supported the imposition of the sanction of public reprimand upon an attorney because in imposing the sanction, the Supreme Court of Florida explicitly or implicitly considered the nine criteria utilized by the Supreme Court of Mississippi to determine an appropriate sanction for attorney misconduct. Miss. Bar v. Burtoff, 269 So. 3d 85 (Miss. 2018).

In a reciprocal disciplinary proceeding, the attorney was permanently disbarred from the practice of law in Mississippi because the certified copy of the order of disbarment entered by the Louisiana Supreme Court was conclusive evidence of the guilt of the offense or unprofessional conduct on which that sanction was ordered; the Louisiana Supreme Court explicitly or implicitly considered all nine criteria utilized by the Mississippi Supreme Court to determine an appropriate sanction; the attorney did not respond to the Mississippi Bar's motion for reciprocal discipline, and thus presented no mitigating factors for consideration; and no extraordinary circumstances compelled, justified, or supported variance from the sanction of disbarment. Miss. Bar v. Hughes, 268 So. 3d 1283 (Miss. 2018).

There was no exceptional circumstance under the proportionality test that would have caused a departure from the sanction imposed by Tennessee where the attorney admitted that he violated his ethical obligations to provide diligent representation, to communicate with his client, and to expedite litigation, resulting in conduct detrimental to the administration of justice. Miss. Bar v. Jones, 226 So. 3d 89 (Miss. 2015).

In a reciprocal disciplinary action, the attorney was suspended for six months, followed by 18 months of probation, publicly reprimanded, and assessed costs and expenses incurred by Mississippi Bar after the attorney failed to property supervise a nonlawyer assistant, neglected cases, engaged in misrepresentation, and failed to timely respond to an ethics complaint. Caldwell v. Miss. Bar, 118 So. 3d 549 (Miss. 2012).

In a Miss. R. Disc. St. Bar 13 proceeding in which an attorney had been permanently disbarred from the practice of law in Louisiana after he pled guilty to inciting a felony, while the attorney offered several mitigating factors for consideration by the Supreme Court of Mississippi, he cited no extraordinary circumstances which compelled, justified or supported variance from Louisiana's sanction. Additionally, Miss. R. Disc. St. Bar 6 provided for disbarment following a plea of guilty to any felony in any state or federal court. Miss. Bar v. Dorhauer, 38 So. 3d 610 (Miss. 2009).

In a case in which an attorney had been suspended from the practice of law in Tennessee for three months and the Mississippi Bar filed a formal complaint against the attorney, the case did not present any extraordinary circumstances which compelled, justified, or supported variance from Tennessee's sanction. Miss. Bar v. Burlison, 38 So. 3d 614 (Miss. 2009).

In a disciplinary proceeding brought under Miss. R. Disc. St. Bar 13, after considering the facts and sanctions in similar cases, the court found that the sanctions of a one-year suspension, one-year probation and assessment of costs were appropriate, which was similar to the sanctions imposed by the Tennessee Supreme Court for the violations. Miss. Bar v. Dolan, 987 So. 2d 921 (Miss. 2008).

In a disciplinary proceeding brought under Miss. R. Disc. St. Bar 13, reciprocal sanctions were appropriate because the supreme court took the disciplinary action of another state's supreme court to be conclusive proof of a disciplinary violation. Miss. Bar v. Inserra, 929 So. 2d 884 (Miss. 2006).

Attorney was sanctioned with a six-month suspension with all but one month deferred and probation for one year, under Miss. R. Disc. St. Bar 13, because the sanction of another jurisdiction (Louisiana) was conclusive evidence of the guilt of an offense or unprofessional conduct. Miss. Bar v. Pepper, 939 So. 2d 767 (Miss. 2006).

Under Miss. R. Disc. St. Bar 13 and 18, the lawyer was transferred to disability inactive status and not permitted to practice law when he was personally incapable of practicing law due to his cardiac problems and where his license had been similarly suspended in Kentucky and Tennessee. Miss. Bar v. Catron, 918 So. 2d 1267 (Miss. 2005).

Because the Mississippi Supreme Court takes the cold record of a foreign jurisdiction as conclusive, it holds that in reciprocal attorney discipline cases, deference must be afforded to the foreign jurisdiction's findings. Clearly Miss. R. Disc. St. Bar 13 provides the Supreme Court can impose whatever sanction it deems appropriate in reciprocal attorney discipline cases; however, Rule 13 is not an invitation to disregard logic, reason or common sense. Only under extraordinary circumstances should there be significant variance from a sanction imposed by the foreign jurisdiction. Miss. Bar v. Drungole, 913 So. 2d 963 (Miss. 2005).

Where an attorney received an informal admonishment in Tennessee for appearing as counsel in a civil case without fully complying with Tennessee's pro hac vice rule, a private reprimand was an appropriate sanction in Mississippi. Miss. Bar v. Atty. BBB, 890 So. 2d 882 (Miss. 2004).

Where an attorney was disbarred in Texas for conversion of a client's funds, disbarment in Mississippi was also appropriate; final discipline can be more or less severe than the discipline imposed by another jurisdiction. Miss. Bar v. Montgomery, 890 So. 2d 880 (Miss. 2004).

Miss. R. Disc. St. Bar 13 provided that if an attorney licensed to practice law in the State of Mississippi was disciplined in another jurisdiction, the Mississippi Supreme Court could impose discipline; a 90-day suspension was appropriate, but because the lawyer voluntarily suspended her practice of law in Mississippi, she had completed her 90-day suspension and could petition for reinstatement to the practice of law in Mississippi after she complied with all of the conditions for readmission to the Tennessee Bar Association. Miss. Bar v. Caldwell, 890 So. 2d 855 (Miss. 2004).

Where an attorney was suspended in Arizona as a result of overdrafting the attorney's client trust account four times, reciprocal discipline in the form of a public reprimand pursuant to Miss. R. Disc. St. Bar 8.6(ii) was imposed in Mississippi pursuant to Miss. R. Disc. St. Bar 13. Miss. Bar v. Inserra, 855 So. 2d 447 (Miss. 2003).

Following his suspension from practice before the U.S. Fifth Circuit Court of Appeals for one year based upon his conduct in handling a client's case pending before that court, an attorney was subjected to a public reprimand and was ordered to pay restitution to the client of any compensation received for representing the client and to pay all costs and expenses. The Miss. Bar v. Walls, 797 So. 2d 217 (Miss. 2001).

In determining an appropriate sanction for an offense committed in a foreign jurisdiction, the court should not be bound by those findings of the foreign jurisdiction which go to the sanction imposed; but should approach the issue of an appropriate sanction under Mississippi case law, which permits the court to place either more or less weight on the mitigating circumstances of the individual case. Mississippi Bar v. Pels, 708 So. 2d 1372 (Miss. 1998).

Bankruptcy court.

Attorney made material misrepresentations to the United States Bankruptcy Court, violated the bankruptcy court's order to have the filing fee accompany the petition, and violated Fed. R. Bankr. P. 1006, which required payment of the filing fees in full before the attorney may accept fees. In applying Miss. R. Disc. St. Bar 13, the Mississippi Supreme Court found that a reciprocal suspension was proper as there were no extraordinary circumstances, while noting it could impose any discipline it deemed proper in a given case depending upon the particular circumstances Miss. Bar v. Drungole, 913 So. 2d 963 (Miss. 2005).

Reciprocal sanctions against attorney suspended by United States Bankruptcy Court were in order; attorney was therefore suspended from practice of law for 180 days, with taxation of costs and expenses, for his failure to follow three court orders and to protect his clients' interests. Mississippi Bar v. Felton, 699 So. 2d 949 (Miss. 1997).

Federal courts.

Attorney was suspended from the practice of law in Mississippi for two years based on the reciprocity doctrine as the United States District Court for the Eastern District of Louisiana suspended the attorney for a period of two years because, in advising a client to accept a settlement offer related to an oil spill, the attorney made certain derogatory statements and expressed his opinion of possible corruption of the multi-district-litigation judge and the plaintiffs' steering committee. Miss. Bar v. Thomas, — So. 3d —, 2019 Miss. LEXIS 84 (Miss. Feb. 28, 2019).

Attorney was suspended from practice of law in any Mississippi state court for six months, as a reciprocal sanction for federal court's suspending him for two years for failure to comply with court orders. Mississippi Bar v. Alexander, 669 So. 2d 40 (Miss. 1996).

Although sanction of disbarment was requested by State Bar, supreme court imposed suspension of one year on attorney adjudged guilty of unprofessional conduct by federal appeals court and suspended from practice before its bar for a year. Mississippi State Bar v. Young, 509 So. 2d 210 (Miss. 1987).

Procedure.

Where the attorney had been disciplined in Florida, the Supreme Court of Mississippi would only consider, pursuant to Miss. R. Disc. St. Bar 13, whether or not the discipline to be imposed against the attorney in Mississippi should be more or less severe than the discipline imposed against the attorney in Florida. Miss. Bar v. Broome, 949 So. 2d 704 (Miss. 2006).

Five-year suspension from the practice of law in Mississippi was appropriate sanction, Miss. R. Disc. St. Bar 13, for attorney who had been suspended for five years in Tennessee; attorney's inaction to Mississippi Bar attempting to serve process demonstrated his intent not to contest any discipline which may be imposed on him. Miss. Bar v. Gilmer, 949 So. 2d 689 (Miss. 2006).

When another jurisdiction has imposed on a Mississippi lawyer a sanction of suspension or disbarment, the matter of reciprocal discipline is to be presented directly to the supreme court and not to a complaint tribunal, with the sole issue to be the extent of final discipline to be imposed on the attorney in Mississippi. Mississippi Bar v. Strauss, 601 So. 2d 840 (Miss. 1992).

State court.

Supreme Court concluded that it was appropriate to impose reciprocal discipline on an attorney equal to the suspension period imposed in Louisiana. The Supreme Court found no extraordinary circumstances that compelled, justified or supported variance from Louisiana's six-month suspension order. Miss. Bar v. Gibbons, — So. 3d —, 2019 Miss. LEXIS 354 (Miss. Oct. 3, 2019).

In a reciprocal disciplinary proceeding in which an attorney had been suspended from the practice of law in Arizona for one year with one year of probation upon reinstatement after a hearing officer found that he had violated ten Arizona ethical rules, two Arizona Supreme Court Rules, and American Bar Association Standard 3.0, pursuant to Miss. R. Disc. St. Bar 13, the sanction imposed by the Arizona Supreme Court was conclusive evidence of the guilt of the offense or unprofessional conduct. Miss. Bar v. Inserra, 38 So. 3d 605 (Miss. 2009).

Where an attorney pled guilty in Tennessee to consuming alcohol in violation of his monitoring agreement and was suspended by the Tennessee Supreme Court for one year, he was suspended for one year in Mississippi, retroactive to the date of the Tennessee order, because the infraction did not involve an act of moral turpitude or significantly harm a Mississippi client. Miss. Bar v. Hodges, 949 So. 2d 683 (Miss. 2006).

Lawyer was suspended from the practice of law in Mississippi for nine months after the lawyer was suspended in Illinois for representing to clients and to court that the lawyer had acquired expert opinions as to causation in a medical malpractice suit when the lawyer had not. Miss. Bar v. Barry, 890 So. 2d 870 (Miss. 2004).

Findings of Louisiana supreme court were conclusive evidence of attorney's guilt of offenses charged in Louisiana. Mississippi State Bar v. Edwins, 534 So. 2d 218 (Miss. 1988).

RESEARCH REFERENCES

ALR. Reciprocal Discipline of Attorneys — Commingling or Other Mishandling of Client Funds. 45 A.L.R.6th 175.

Rule 14. Immunity from civil suit — Right to sue.

(a) All complaints filed, statements made and documents or other tangible things produced pursuant hereto shall be absolutely privileged, and no civil suit predicated therein may be instituted, and each person, firm, association or legal entity filing such a complaint shall be immune from any civil suit pending thereon. The officers of the Bar and all of the disciplinary agencies, and their assistants, staff, employees and receivers shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all evidence or testimony given or submitted in the course of any investigation, investigatory hearing, formal hearing or review proceedings held and conducted under these rules.

(b) In an action separate and distinct from the disciplinary proceedings, the attorney may, by petition filed with the clerk of the Court, seek a finding by the Court or its special master on the issue of malicious prosecution, abuse of process, malicious publication to persons not authorized to receive information pertaining to matters arising under these rules, slander or libel. If the Court finds or approves a finding by a special master that there appears to or may have been malicious prosecution, abuse of process, defamation of character, slander or libel, the court shall enter its order granting the right to sue, notwithstanding the immunity provided above. Such finding and right to sue shall constitute only a right to commence an action, not an adjudication as to whether or not there was, in fact, a waiver of the immunity provided above, and not a finding upon the merits of any action which the attorney may thereafter institute. No action shall be instituted prior to the issuance of the order herein provided. The statute of limitations provided by statute for applicable causes of action shall commence on the date the order is entered. (Amended November 16, 1995.)

Cross References — Immunity from civil suit predicated on disciplinary proceedings, see Mississippi Code of 1972, § 73-3-345.

JUDICIAL DECISIONS

Illustrative cases.

Having initiated lawsuit against defendant attorney in Circuit Court after his bar complaint was dismissed, plaintiff enjoyed no immunity to attorney's counterclaims for malicious prosecution, and therefore trial judge properly allowed attorney's counterclaims to go forward. Roussel v. Robbins, 688 So. 2d 714 (Miss. 1996).

Rule 15. Confidentiality of matters under these rules — Penalties.

(a) All disciplinary agencies, their assistants, staff and employees, members of the bar, court reporters, clerks, and receivers are strictly enjoined to keep and maintain confidential, all things arising under these rules and all proceedings thereon. The attorney may make such public statement or disclosure as he desires. The period of confidentiality shall end, however, upon the happening of any of the following events: (i) upon the accused attorney making any public statement or disclosure about a proceeding under these rules; or (ii) a formal complaint under these rules is filed with the clerk of the Mississippi Supreme Court.

(b) Disciplinary agencies under these rules shall have authority to share information with law enforcement officials concerning any alleged violation of any federal or state criminal laws by an attorney.

(c) These rules shall not prohibit any complainant, the accused attorney, or any witnesses from discussing publicly the existence of the proceeding under these rules or from disclosing any information relating thereto, including the disclosing of any documents involved in the disciplinary proceeding.

(d) Statements made pursuant to Rule 15(c), in whatever form or by whatever means, outside the disciplinary process shall not enjoy the immunity provided in Rule 14. (Amended November 16, 1995.)

Cross References — Confidentiality of matters under investigation and proceedings, see Mississippi Code of 1972, § 73-3-343.

JUDICIAL DECISIONS

Applicability.

Confidentiality provisions of this rule could not be construed to prevent complaint tribunal's consideration of attorney's prior disciplinary offenses. Hall v. Mississippi Bar, 631 So. 2d 120 (Miss. 1993).

Rule 16. Jurisdiction of non-resident attorneys — Notice — Service.

(a) The acceptance by a non-resident attorney of the rights and privileges of the practice of law within this state, as evidenced by his practice of law in this state, shall be deemed equivalent to an appointment by such non-resident attorney to the Executive Director of the Bar to be his true and lawful attorney, upon whom may be served all process, summons or notice of any and all proceedings against him instituted pursuant to and conducted under these rules. Acceptance of such rights and privileges and the practice of law by any such non-resident attorney in this state shall be the signification of his agreement that any such process, summons or notice against him which is so served shall have the same legal force and validity as if served personally.

(b) Notice of the service of such process, summons, or notice, together with a copy of any complaint or charge, shall be mailed forthwith by the Executive Director by United States certified or registered mail, return receipt requested, restricted for delivery to addressee only, and with postage pre-paid, to such non-resident attorney at his last known address.

(c) When such process, summons or notice is served as herein provided, and return receipt or refusal is filed, it shall be deemed sufficient to give to the Court and its disciplinary agencies provided for herein, jurisdiction over said non-resident attorney for the purpose of investigating and finally determining any complaint or charge touching upon the professional conduct or conduct evincing unfitness for the practice of law or the personal incapacity to practice law of such non-resident attorney.

Cross References — Jurisdiction over non-resident attorneys, see Mississippi Code of 1972, § 73-3-369.

PART TWO. PERSONAL INCAPACITY

Rule 17. Incapacity defined.

For purposes of Rules 17 through 23, the term "incapacitated" shall include (a) suffering from mental or physical illness of such nature as to render the person afflicted incapable of managing himself, his affairs or the affairs of others with the integrity and competency requisite for the proper practice of law; or (b) habitual use of alcoholic beverages, or liquids of any alcoholic content, hallucinogens, sedatives, drugs, narcotics or other mentally or physically disabling substance of any character whatsoever to any extent which impairs or tends to impair the ability to conduct efficiently and properly, the affairs undertaken for a client in the practice of law. (Amended effective July 1, 2019.)

Cross References — Personal incapacity generally, see Mississippi Code of 1972, §§ 73-3-347 through 73-3-365.

Rule 18. Involuntary commitment or adjudication of incompetency.

If an attorney has been judicially declared incompetent, or is involuntarily committed on the grounds of incompetency or disability, the Court or a Complaint Tribunal, upon proper proof of the fact, shall enter an order immediately transferring the attorney to disability inactive status for an indefinite period until further order of the Court or a Complaint Tribunal. A copy of the order shall be lawfully served in accordance with Rule 4(d)(2)(b) or (C), Mississippi Rules of Civil Procedure. The judge of any court within this state shall have the affirmative duty to send a certified copy of the order declaring the attorney incompetent or involuntarily committing the attorney on the grounds of incompetency or disability to Complaint Counsel within ten (10) days after entry of such order. (Amended effective July 1, 2019.)

JUDICIAL DECISIONS

Appropriate sanctions.

Under Miss. R. Disc. St. Bar 13 and 18, the lawyer was transferred to disability inactive status and not permitted to practice law when he was personally incapable of practicing law due to his cardiac problems and where his license had been similarly suspended in Kentucky and Tennessee. Miss. Bar v. Catron, 918 So. 2d 1267 (Miss. 2005).

Rule 19. Inability to properly defend.

If an attorney in responding to allegations in the course of a formal disciplinary proceeding alleges an inability to assist in the defense due to mental or physical incapacity, the Court or a Complaint Tribunal shall immediately transfer the attorney to disability inactive status pending the proceedings to be held pursuant to Rule 20 of these Rules.

If the Court or a Complaint Tribunal determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred and the attorney retained on disability inactive status until the Court subsequently considers a petition for transfer of the attorney to active status.

If the Court or Complaint Tribunal determines the claim of incapacity to defend to be invalid, the disciplinary proceedings shall resume.

The attorney bears the burden of proving inability to assist in the defense due to mental or physical incapacity. (Amended effective July 1, 2019.)

Rule 20. Proceedings to determine incapacity and reciprocal disability inactive status.

(a) Information relating to an attorney's physical or mental condition which adversely affects the attorney's ability to practice law shall be investigated and where warranted, shall be the subject of formal proceedings to determine whether the attorney shall be transferred to disability inactive status. The hearings shall be conducted before a Complaint Tribunal in the same manner as disciplinary proceedings, including appeals, except that the hearings to determine incapacity shall be confidential.

The Complaint Tribunal shall provide for such notice to the attorney of proceedings in the matter in accordance with Rule 4(d)(2)(B) or (C), Mississippi Rules of Civil Procedure. The Complaint Tribunal may take or direct whatever action it deems necessary or proper to determine whether the attorney is so incapacitated, including referral to the LJAP to obtain an examination by medical experts approved by the LJAP and to report to the Complaint Tribunal. The costs of such investigation and examination shall be borne by the attorney.

If the Complaint Tribunal, upon due consideration, concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order transferring the attorney to disability inactive status for an indefinite period and until further order of the Court. The order shall also require the attorney to sign a contract with the LJAP for treatment referral and monitoring as determined appropriate by LJAP. Any pending disciplinary proceedings against the attorney shall be held in abeyance.

(b) Upon being transferred to disability inactive status in another jurisdiction, an attorney admitted to practice in the State of Mississippi shall within thirty (30) days of transfer to disability inactive status provide Complaint Counsel a certified copy of the transfer.

(c) Upon notification from any source that an attorney admitted to practice in the State of Mississippi has been transferred to disability inactive status in another jurisdiction, Complaint Counsel shall obtain a certified copy of the transfer and file it with the Court. A final adjudication in another jurisdiction that an attorney admitted to practice in the State of Mississippi should be transferred to disability inactive status shall establish conclusively the disability for purposes of a disability proceeding in the State of Mississippi. The Court shall transfer the attorney to disability inactive status unless the attorney demonstrates or the Court finds that the reason for the original transfer no longer exists. The burden shall be upon the attorney to demonstrate that the reason for the original transfer to disability status no longer exists. (Amended effective July 1, 2019.)

Rule 21. Transfer to disability inactive status a matter of public record.

The transfer of an attorney to disability inactive status shall be a matter of public record. Documents relating to medical evidence or other personal information regarding the attorney shall remain confidential. (Amended effective July 1, 2019.)

Rule 22. Attorney transferred to disability inactive status not permitted to practice law.

An attorney transferred to disability inactive status shall not be permitted to practice law until restored to the privileges by order of the Court. (Amended effective July 1, 2019.)

Rule 23. Reinstatement from disability inactive status.

(a) No attorney transferred to disability inactive status may resume active status except by order of the Supreme Court. An attorney transferred to disability inactive status is entitled to petition for transfer to active status once a year or at whatever shorter intervals the Court or Complaint Tribunal may direct in the order transferring the attorney to disability inactive status or any modifications thereof.

(b) Procedures for reinstatement of an attorney transferred to disability inactive status shall be, insofar as is applicable, the same as the procedure for reinstatement of an attorney following suspension upon disciplinary grounds. The petition for reinstatement shall be filed with the Clerk of the Court, and a copy shall be served upon the Bar. An investigatory fee of $1,000.00 shall be paid to the Bar in addition to any other sum due to the Bar. The petition shall include a status report from LJAP regarding the attorney's treatment, monitoring, and compliance. In addition, the attorney shall obtain an examination by a medical expert approved by LJAP specifically addressing the removal of the attorney's disability and include the report with the petition. The expense of the examination shall be borne by the attorney.

(c) Upon receipt of the reinstatement petition, Complaint Counsel shall commence investigation within thirty (30) days. Upon completion of the investigation or within one hundred twenty (120) days from the commencement of the investigation, whichever occurs first, the Board of Bar Commissioners shall fully answer the petition. The Bar shall determine, based upon Complaint Counsel's investigation, whether the Bar supports, or objects to, the attorney's reinstatement. Upon filing of the Bar's answer, the proceedings shall continue as the Court may direct and the Court, in its discretion, may grant or deny the petition as circumstances and justice require. Upon granting the petition for reinstatement, the Court shall reinstate any pending disciplinary matters that were held in abeyance upon the attorney's transfer to disability inactive status. Pending final resolution of any such disciplinary matters, the Court may, upon motion of the Bar, place the attorney on interim suspension. (Amended effective July 1, 2019.)

PART THREE. MISCELLANEOUS

Rule 24. Time — Generally not jurisdictional.

References to time within these rules and procedural sections are directory and not jurisdictional. Time limitations are administrative, not jurisdictional; however, the time for filing appeals or seeking reinstatement shall be jurisdictional. Failure to observe directory time interval may result in contempt of the agency having jurisdiction but will not justify abatement of any disciplinary investigation or proceeding.

JUDICIAL DECISIONS

Delay in proceedings.

Attorney's request for a new disciplinary hearing, because a scheduling order was not issued within 10 days and because an opinion and judgment was not signed by a specific date, was denied because under Miss. R. Disc. St. Bar 26 such deviations did not justify abatement of any disciplinary investigation or proceeding. Stewart v. Miss. Bar, 969 So. 2d 6 (Miss. 2007).

In order to bar disciplinary proceedings due to delay, respondent must demonstrate substantial prejudice in his ability to present a defense. Mississippi Bar v. An Att'y, 636 So. 2d 371 (Miss. 1994), reh'g denied.

Statutory time limitations were directory rather than jurisdictional, and 17-day delay in filing of formal disciplinary complaint did not justify dismissal of complaint; more protracted delay in holding tribunal hearing did not prejudice respondent attorneys, when in some instances they themselves requested delays and in one instance delay was due to a material case pending before Supreme Court. Myers v. Mississippi State Bar, 480 So. 2d 1080 (Miss. 1985), cert. denied, 479 U.S. 813, 107 S. Ct. 64, 93 L. Ed. 2d 23 (1986).

Rule 25. Costs and expenses.

(a) A Tribunal or the Court may assess costs incurred in the investigation, prosecution and defense of any disciplinary matter as justice may require. Such costs and expenses shall include the actual and reasonably necessary expenses of the Bar, excluding Complaint Counsel's time.

(b) An attorney exonerated of the charge may recover from the Bar any sums actually paid to the Bar and costs paid to the Clerk of the Court or for service of process in this State. The attorney shall recover no other costs or expenses.

(c) In reinstatement proceedings, in addition to any investigatory fee, the petitioner shall pay all court costs and expenses of any physical or psychiatric examinations required by the Court.

Rule 26. Preservation of evidence.

Proceedings to preserve evidence may be initiated by complaint counsel at any time independently of pleas of guilty, pleas of nolo contendere, convictions, or imposition of discipline in any jurisdiction.

Rule 27. Repealer and severability.

(a) From and after the adoption of these rules, all other rules or statutes pertaining to attorney disciplinary proceedings shall be superseded by these rules.

(b) If any of these rules or sections, or any part thereof, are declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining parts thereof shall be in no manner affected thereby but shall remain in full force and effect. Unless the contrary intent shall clearly appear in every amendment hereinafter made, each and every amendment made hereafter shall be read and construed as though the provisions hereof form an integral part of such amendments, whether expressly set out therein or not. (Amended effective December 5, 1988.)

JUDICIAL DECISIONS

Constitutionality.
Construction.
Applicability.

Constitutionality.

Attorney disciplinary proceedings are an integral part of the functioning of the judicial branch and thus not properly subject to the "legislative power" vested in Section 33 of the 1890 Mississippi Constitution; upon their adoption, the Rules of Discipline superseded all statutes on the subject of attorney discipline. Hall v. Mississippi Bar, 631 So. 2d 120 (Miss. 1993).

Construction.

Fact that Bar did not raise issue of attorney's punishment at hearing stage did not mean it was estopped from doing so on appeal, since Rules of Discipline superseded all other rules or statutes pertaining to attorney discipline, and supreme court had power to render any order it deemed appropriate. Mississippi State Bar v. Blackmon, 600 So. 2d 166 (Miss. 1992).

Applicability.

Effect of supreme court's assertion of exclusive and inherent jurisdiction over matters pertaining to attorney discipline, and its promulgation of the Rules of Discipline for the Mississippi State Bar, is that any statute must yield to a contradictory Rule of Discipline. Mississippi Bar v. McGuire, 647 So. 2d 706 (Miss. 1994).

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RULES OF THE MISSISSIPPI LAWYERS AND JUDGES ASSISTANCE PROGRAM

Adopted effective January 8, 2015

Rule
1. Authorization.
2. Powers and Duties.
3. Protection of the Public, the Legal System, the Profession.
4. Confidentiality.
5. Immunity.

Rule 1. Authorization.

The Supreme Court of Mississippi ("the Court") hereby establishes the Mississippi Lawyers and Judges Assistance Program ("LJAP"). The Court authorizes the Board of Commissioners of The Mississippi Bar (the Bar) to establish a program of intervention, referral for evaluation and treatment, and monitoring and assistance for attorneys, judges, and law students who suffer from chemical dependence or from physical, emotional, or mental disabilities that result from disease, disorder, trauma, or age, and which impairs or tends to impair their ability to practice law or to perform their judicial functions, impairs their professional conduct, or impairs or could impair their admission to the practice of law.

Such program shall be implemented by a Lawyers and Judges Assistance Program (LJAP) Committee appointed by the President of the Bar; provided, no member of any disciplinary agencies shall be a member of the LJAP Committee. Such Committee's creation shall in no way be construed to hinder, limit, or otherwise affect any disciplinary process or Bar Admission process.

The LJAP Committee shall be governed by appropriate regulations promulgated by the LJAP Committee and approved by the Board of Commissioners of the Bar consistent with these Rules.

The LJAP Committee shall be governed by appropriate rules and regulations approved by the Board of Commissioners of the Bar, create action groups which may exercise any or all of the functions set forth herein to the extent provided in any such rules and regulations. Such action groups shall have all of the immunities provided for the LJAP Committee. (Effective January 8, 2015.)

Rule 2. Powers and Duties.

(a) The LJAP shall have jurisdiction to confidentially evaluate reports of impairment arising from chemical dependency or physical, mental, or emotional disability which are self reported by any attorney, judge, or law student. Evaluation specifically includes, but is not limited to, conferring with any attorney, judge, or law student who self reports such allegations and making recommendations to such attorney, judge, or law student, should it be determined that he or she is in fact impaired, of sources of remedial assistance.

(b) The LJAP Committee shall have jurisdiction to confidentially evaluate reports or allegations of attorney, judge, or law student impairment arising from chemical dependency or physical, mental, of emotional disability if the attorney, judge, or law student is referred to the LJAP Committee by a law firm, attorney, friend, family member, client, judge, law school professor, law school dean, law school staff, or member of the general public. Evaluation shall specifically include, but is not limited to, confidentially conferring with any attorney, judge, or law student who is referred and making recommendations to such attorney, judge, or law student, should it be determined that he or she is in fact impaired, of sources of remedial assistance.

(c) The LJAP Committee shall have jurisdiction to confidentially evaluate, to refer for evaluation and treatment, and to monitor an attorney or judge who is referred to the LJAP Committee by a court, a designated attorney disciplinary agent or a judicial disciplinary agency regarding reports or allegations of impairment arising from chemical dependency or physical, mental, or emotional disability. The LJAP Committee shall report the results of the evaluation, treatment, monitoring, and compliance of the attorney or judge to the court or referring disciplinary agency in the time and manner directed by the court or referring disciplinary agency.

(d) The LJAP Committee shall have jurisdiction to confidentially evaluate, to refer for evaluation and treatment, and to monitor a law student applying for admission to the Mississippi Bar if the law student is referred to the LJAP Committee by the Court or by the Mississippi Board of Bar Admissions regarding reports or allegations of impairment arising from chemical dependency or physical, mental, or emotional disability. The LJAP Committee shall report the results of the evaluation, treatment, monitoring, and compliance to the Court or the Mississippi Board of Bar Admissions in the time and manner directed by the Court or the Mississippi Board of Bar Admissions.

(e) The LJAP Committee may, under appropriate rules and regulations approved by the Board of Commissioners of the Bar, provide assistance through volunteer attorneys or judges to an attorney or judge who is temporarily unable to proceed due to chemical dependency or physical, mental, or emotional disability. The assistance provided shall be only of a procedural nature to effect continuances, postponements, extensions of time, notifications to clients, courts, other attorneys involved in a matter or matters, or other procedural tasks necessary to protect the interests of clients, the legal system, and the profession. Volunteer attorneys and judges who provide such assistance through the LJAP Committee and to the extent provided in any such rules and regulations shall have all of the immunities provided for the LJAP Committee. (Effective January 8, 2015.)

Rule 3. Protection of the Public, the Legal System, the Profession.

When contacted by the LJAP regarding an attorney or judge who is participating with the LJAP and is engaged in treatment and rehabilitation, courts, judges, and attorneys are encouraged to accommodate requests from the LJAP for continuances, postponements, extensions of time, notification to clients, courts, and other attorneys involved in a matter or matters, or other procedural tasks in order to protect the interests of clients, the legal system, and the profession. (Effective January 8, 2015.)

Rule 4. Confidentiality.

Except as noted in these Rules, reports; allegations and information furnished; results of referrals, conferences, evaluation and treatment reports, and monitoring reports; and information learned through assistance provided by the LJAP Committee, its action groups, or its volunteer attorneys, shall be privileged communication and held in the strictest confidence between the attorney, judge, or law student involved, and the LJAP Committee. However, the status of compliance of an attorney, judge, or law student who has been referred to the LJAP Committee by the Court, a designated attorney disciplinary agent, a judicial disciplinary agency, or the Mississippi Board of Bar Admissions with the terms and conditions imposed upon the attorney, judge, or law student by the LJAP Committee shall not be privileged communication for the purpose of the LJAP Committee reporting such information to the Court, the referring disciplinary agency, or the Mississippi Board of Bar Admissions. For good cause shown, where the allegations of impairment are made by the family of the attorney, judge, or law student, the LJAP Committee may, in its discretion, release such information to immediate family members as in its judgment will be in the best interest of the attorney, judge, or law student involved. (Effective January 8, 2015.)

Rule 5. Immunity.

The LJAP, the LJAP Committee, the LJAP officers, directors, staff, assistants, employees, monitors, action groups, and volunteer attorneys, in their actions regarding reports or allegations of impairment affecting attorneys, judges, and law students, shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all evidence or testimony given or submitted during the course of any evaluation, monitoring, hearing, formal hearing, or proceedings arising from the LJAP Committee's work under these Rules.

Rule 8.3, Mississippi Rules of Professional Conduct, shall not require disclosure of information otherwise protected by Rule 1.6, Mississippi Rules of Professional Conduct, or information gained by an attorney or judge while participating in the LJAP. (Effective January 8, 2015.)

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RULES GOVERNING ADMISSION TO THE MISSISSIPPI BAR

Adopted November 1, 1979
Including Amendments through July 1, 2010.

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RULE I. DEFINITIONS AND INTERPRETATIONS

Section 1. Definitions.

As used in these Rules, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implication:

A. *Applicant.* Individual applying for admission to the Bar or registration as a law student.

B. *Bar.* Mississippi Bar.

C. *Board.* Board of Bar Admissions.

D. *Clerk.* Clerk of the Supreme Court.

E. *Committee.* Committee on Character and Fitness.

F. *Court.* Supreme Court of Mississippi.

G. *File or filed.* Delivered and accepted in the office of the Board during normal working hours on or before the day required for filing.

H. *MBE.* Multistate Bar Examination.

I. *MEE.* Multistate Essay Examination.

J. *Notify or notified.* Notice by the Board shall be effective when mailed by regular first class mail, postage prepaid, to the address listed by the applicant on his application. Applicants shall notify the Board in writing of any change of mailing address occurring after their applications are filed.

K. *Rules.* The Rules Governing Admission to the Mississippi Bar as adopted by the Board and approved by the Chief Justice of the Court.

L. *Secretary.* Secretary of the Board of Bar Admissions. (Effective November 1, 1991.)

Section 2. Interpretation.

Words in the masculine shall include the feminine and neuter gender except as may result from necessary implication. (Effective November 1, 1991.)

Section 3. Headquarters.

The office of the Board shall be located at the Gartin Justice Building, 450 High Street, Second Floor, Jackson, Mississippi 39201. The mailing address of the Board is P.O. Box 1449, Jackson, Mississippi, 39215-1449. (Effective

November 1, 1991; amended effective April 15, 2004; amended effective July 1, 2010.)

RULE II. BOARD OF BAR ADMISSIONS

Section 1. Appointment — Term of office.

By virtue of Section 73-3-2, Mississippi Code of 1972, the Mississippi Legislature created a Board to be known as the "Board of Bar Admissions" which shall be appointed by the Supreme Court of Mississippi. The Board shall consist of nine (9) members, who shall be members in good standing of the Mississippi Bar and shall serve for terms of three (3) years. Three (3) members shall be appointed from each Supreme Court District, one (1) by each Supreme Court justice from his district, with the original appointments to be as follows: Three (3) to be appointed for a term of one (1) year, three (3) to be appointed for a term of two (2) years, and three (3) to be appointed for a term of three (3) years, one (1) from each district to be appointed each year. No member of the Board of Bar Admissions may be a member of the Legislature. Board members will serve until replaced. Vacancies during a term shall be filled by the appointing justice or his successor for the remainder of the unexpired term. (Effective November 1, 1991; amended effective April 15, 2004 to provide that Board members serve until replaced.)

Section 2. Duties.

It shall be the duty of the Board to administer these Rules and to determine the fitness and qualifications of persons seeking admission to practice law in the State of Mississippi. In the performance of these duties the Board, the Committee and their staff and assistants shall be deemed to be officers of the Court and members of the Judicial Branch of the Government of the State of Mississippi. (Effective November 1, 1991.)

JUDICIAL DECISIONS

Mental and emotional fitness.

Applicant asserted that the Mississippi Board of Bar Admissions made a medical determination of the applicant's mental instability without having a medical license; however, there was no requirement that the Board include a member with a medical degree, and the rules presupposed the Board was capable of evaluating an applicant's mental and emotional state, not for the purposes of medical diagnosis, but for the purpose of determining whether he or she was mentally and emotionally fit to practice law. Dean v. Miss. Bd. of Bar Admissions (In re Dean), 972 So. 2d 590 (Miss. 2008).

Section 3. General powers.

The Board shall have the power:

A. To promulgate necessary Rules for the administration of their duties, subject to the approval of the Chief Justice of the Court, and to promulgate operating regulations and procedures, consistent therewith, as the Board deems necessary and proper to carry out the administration of their duties.

B. In connection with the performance of its duties, to take testimony under oath and to compel the attendance of witnesses and the production of documents by the filing of a *praecipe* for a subpoena with the Clerk.

C. To require the payment by each applicant of such reasonable fees as prescribed by the Rules adopted by the Board and approved by the Chief Justice of the Court. All fees collected by the Board shall be paid to the State Treasurer, who shall issue receipts therefor and who shall deposit such funds in the State Treasury in a special fund to the credit of said Board.

D. To employ such stenographic or other assistance as may from time to time be necessary or proper.

E. To conduct, directly or through the Committee on Character and Fitness, such investigation of each applicant as shall be necessary to determine his character and fitness to practice law and his compliance with the Rules.

F. To certify to the Court the names of applicants who are qualified for admission to the Bar.

G. To elect one of its members as chairman and another as vice-chairman.

H. To appoint the members of the Committee on Character and Fitness to perform duties prescribed herein.

I. To appoint a Secretary (who may or may not be a member of the Board). The duties of the Secretary shall be as follows:

(1) Execute official documents as the Secretary of the Board which shall include but not be limited to Certificates of Eligibility for Admission to the Bar.

(2) Serve as liaison between the Board and the Supreme Court of Mississippi.

(3) Such other duties as the Board may determine.

J. To employ a Bar Admissions Administrator and other employees of the Board who shall be paid salaries and/or compensation fixed by the Board. The Bar Admissions Administrator and such other employees shall be supervised by an Executive Director who shall be the Director of the Administrative Office of Courts. The Bar Admissions Administrator and such other employees, as may be designated by the Board, shall be bonded to insure faithful performance of their duties. The duties of the Bar Admissions Administrator shall be as follows:

(1) Dissemination of information as to the prerequisites which a person must have prior to taking the bar examination.

(2) Receiving and examining applications of persons for registration and admission and maintaining appropriate registers of applicants.

(3) Keeping on file all examination papers (except MBE examination booklets and answer sheets) for a period of (45) days following the publication of the results of the examination, after which he shall destroy all such papers unless a request for review has been filed by a failing applicant within the said (45) day period. In such a case, the examination papers of all applicants will be kept

a. until the entry of a final order of the Board changing every petitioning applicant's failing status or

b. for a period of 6 months following the final order of the Board affirming the failure of any applicant, after which period all examination papers shall be destroyed unless the Board otherwise directs.

(4) Unless otherwise directed by the Board, keeping on file all information and documents pertaining to applicants for a period of five (5) years after the applicant is issued a "Certificate of Eligibility" at which time the Board shall have no obligation to retain the files and may thereafter destroy them. This rule does not apply to examination papers which shall be retained only as provided by Item J(3) above.

(5) Keeping a record of all meetings and proceedings, and keeping all minutes and records of the Board of Bar Admissions.

(6) Receiving application fees and other monies paid to the Board and properly depositing and accounting for the same in accordance with state law.

(7) Preparing an annual budget for approval by the Board and assisting in its presentation to the Mississippi State Legislature.

(8) Presenting to the State Auditor claims for payment of expenses incurred by the Board and otherwise administering, or assisting in the administration of the fiscal affairs of the Board.

(9) Supervising the work of other employees of the Board.

(10) Receiving from and preserving records of previous Boards of Bar Admissions, including lists of former applicants for admission.

(11) Such other duties as the Board may determine. (Effective November 1, 1991; amended effective April 15, 2004 to designate the Director of the Administrative Office of Courts as Executive Director of the Board of Bar Admissions and to limit requirements concerning keeping and destruction of files; amended effective July 1, 2010.)

JUDICIAL DECISIONS

Challenges to denial of admission.

Where plaintiff Mississippi Bar applicant, in a suit against defendant Chairman of the Mississippi Board of Bar Admissions challenged the denial of the applicant's application for admission to the Mississippi Bar under Miss. R. Admis. St. Bar II, § 3, VIII, §§ 6, 12, the federal court, sua sponte, dismissed the claim for lack of subject matter jurisdiction under 28 U.S.C.S. § 1257 because the claims focused on the application of the Mississippi Board of Bar Admissions' rules to him, not upon the promulgation or propriety of a rule, and a state court had also rejected the same claims. Dean v. Mozingo, 521 F. Supp. 2d 541 (S.D. Miss. 2007), vacated by, remanded by 326 Fed. Appx. 760, 2009 U.S. App. LEXIS 10071, 73 Fed. R. Serv. 3d (Callaghan) 684 (5th Cir. Miss. 2009).

Section 4. Devotion to duty.

A Board member should be willing and able to devote whatever time is necessary to perform the duties imposed upon him. (Effective November 1, 1991.)

Section 5. Essential conduct.

A Board member should be conscientious, studious, thorough and diligent in learning the methods, problems and progress of legal education, in preparing bar examinations, and in seeking to improve the examination, its administration and requirements for admission to the Bar. He should be just and impartial in recommending the admission of applicants. He should exhibit courage, judgment and moral stamina in refusing to recommend applicants who lack adequate general and professional preparation or who lack good moral character. (Effective November 1, 1991.)

Section 6. Adverse influences, conflicting duties and inconsistent obligations.

A Board member should not have adverse interests, conflicting duties nor inconsistent obligations which will in any way interfere or appear to interfere with the proper administration of his functions. A Board member or agents of the Board should not participate directly or indirectly in courses for the preparation of applicants for bar admission nor act as a trustee of a law school or of a university of which a law school is a part or with which a law school is affiliated. A Board member should so conduct himself that there may be no appearance that his judgment may be swayed by improper considerations. (Effective November 1, 1991.)

Section 7. Oath.

The members of the Board shall take a prescribed Oath to be administered by one (1) of the Judges of the Court, or by another person authorized by law to take Oaths, to faithfully and impartially discharge the duties of the office. (Effective November 1, 1991.)

Section 8. Compensation and expenses.

The members of the Board shall receive compensation as established by the Court for preparing, giving and grading the examination, plus all reasonable and necessary travel expenses incurred in the performance of their duties. (Effective November 1, 1991.)

JUDICIAL DECISIONS

Substantial evidence.
Denial of an applicant's request to be admitted to the Mississippi Bar was supported by substantial evidence when the applicant's conduct exhibited: (1) dishonesty; (2) irresponsibility in business or professional matters; (3) unauthorized practice of law; (4) violation of reasonable rules of conduct; (5) failure to exercise self-control; and (6) mental and emotional instability to the extent that the applicant was not suited for the practice of law. Dean v. Miss. Bd. of Bar Admissions (In re Dean), 972 So. 2d 590 (Miss. 2008).

Section 9. Quorum.

The Board shall act upon each application at a special or regular meeting of the Board at which a quorum is present. A special or regular meeting may be conducted in person, via telephone or conference call or in such other manner as allows for the presence of a quorum, provided that each member of the Board is given at least twenty-four hour's actual notice of the meeting or executes a waiver of notice and consent to such a meeting. Actual notice of the meeting may be given by telephone, telefax, email or any other means reasonably calculated to assure that the members have actual notice of the meeting. Attendance of a Member without objection constitutes waiver of notice and consent to such meeting. A quorum shall consist of a majority of the members. Action on any matter at the meeting of the Board may be taken by a majority of a quorum. The Board may act upon any matter without a meeting by a written poll conducted by the Chairman. Action taken upon such a poll may be taken only upon majority vote of the entire Board. The action of the Board taken by written poll shall be placed in the minutes of the Board at its next meeting. (Effective November 1, 1991; amended effective July 1, 2010.)

RULE III. APPLICATION FOR REGISTRATION AS A LAW STUDENT

Section 1. Application forms.

Law student applications, examination applications and all other forms used in the admissions process shall be in a form approved by the Board. There shall be a fee of $25.00 for the official application forms (money order, certified check or cash only). Applications are available on-line at www.courts.ms.gov/baradmisions.

No application shall be accepted which is not filed on official forms and which is not accompanied by the full amount of fees due. Payment of fees shall be made to "Board of Bar Admissions". (Money order, certified check or cash only). ALL FEES AND OTHER MONIES PAID TO THE BOARD ARE NOT REFUNDABLE IN WHOLE OR IN PART.

Applications must be COMPLETE (must include all required attachments) at time of filing and must include an executed authorization and release to enable the Board to obtain information concerning applicant from third persons.

The applicant must give a full and direct response to all inquiries on the Application and furnish all additional documents required by the Application.

The answers contained in any Application shall be made under oath. The duty to make a true and complete response shall be considered as continuing from the date of the filing of the Application until the date upon which the applicant is admitted to the Bar. If, at any time after the filing of any Application and before the applicant is admitted to the Bar, any answer or portion of any answer ceases to be fully true and complete or fairly requires supplementation, the applicant shall notify the Board through the Bar

Admissions Administrator immediately in writing. As soon as reasonably possible after so notifying the Board, the applicant shall provide such information, documents, and disclosures as are necessary to make the Application fully true and correct. Upon receipt of such notice or supplementation from applicant, or from other sources, the Board may, in its discretion, require further information, investigation, or hearings as it may deem appropriate under the circumstances and may defer consideration of the application until a subsequent bar examination.

An applicant may request, in writing, a certified copy of his or her own completed Application Form filed with the Board under Rule III or Rule IV. The fee for obtaining a certified copy of a filed Application Form shall be $25.00 (money order, certified check, or cash only.) (Effective November 1, 1991; amended May 18, 1999, effective July 1, 1999; amended effective August 24, 2000; amended effective July 1, 2010, to correct the location where applications can be obtained; amended May 21, 2012 to correct the website.)

Section 2. Registration as a law student.

A. Except as otherwise hereinafter provided, every person who intends to apply for admission to the Bar through the general bar examination under Rule IX must file with the Board an Application for Registration as a Law Student. The said application must be filed on or before October 1st after completion of two (2) semesters of law school, or the equivalent thereof. Said application for registration shall be accompanied by a fee of $100.00. (Money order, certified check or cash only). All documents required by the Law Student Application form must be received by the Board within sixty (60) days following the filing of the Application, or such Law Student Application shall be deemed withdrawn and no further action will be taken thereon until the Application is refiled and late filing fees prescribed in Rule III, Section 3, or Rule IV, Section 3 or Section 4, as the case may be, have been paid.

B. The filing of a law student application does not constitute the filing of an examination application. An examination application must be filed in addition to the law student application. See Rule IV, Section 2. (Effective November 1, 1991; amended effective December 9, 2004, to provide a specific date for filing application.)

Section 3. Late registration as a law student.

Any person who does not comply with Section 2(a) above shall be permitted to file a late law student application upon payment of a late registration fee of $300.00: provided, however, that the completed application must be filed with the Board on or before March 1st preceding the February examination deadline, or on or before August 1st preceding the July examination filing deadline. Such applications shall be considered after those filed under Section 2 above. (Money order, certified check or cash only.) (Effective November 1, 1991; amended effective December 9, 2004, to change the filing deadline.)

Section 4. Additional investigation fees.

In addition to the law student registration and examination fees provided for in Rule III, Sections 2(A) and 3 and Rule IV, Sections 2 and 3, any applicant who has previously been admitted to the practice of law in any other jurisdiction shall pay at the time of registration an additional fee in such amount as the National Conference of Bar Examiners may charge in connection with a character investigation. The Board or the Committee may also require any applicant to pay the additional costs of investigation when circumstances require a character investigation more costly than the usual investigation.

The cost of any record, document, or conduction of an investigation or inquiry concerning an application shall be paid by the applicant. The cost of any transcript or record incurred during the conduction of a hearing shall be paid by the applicant. Upon determining that additional costs of investigation shall be assessed, the Board or the Committee shall notify the applicant thereof, along with the amount of the additional costs for which he is required to pay. Said sums shall be due from applicant immediately upon receipt of notice thereof. If payment of the additional costs is not received by the Board within thirty (30) days of the date of such notice to applicant, the application shall be considered withdrawn, and the applicant shall not be considered for admission. For good cause shown for non-payment, the Board may extend the time within which payment must be received before the application is deemed withdrawn. From the time of the determination that additional costs of investigation should be charged to the applicant until the same are paid, neither the Board nor the Committee shall proceed further with the application. (Effective November 1, 1991; amended effective April 4, 2004.)

RULE IV. EXAMINATION APPLICATIONS

Section 1. Application forms.

The application for admission by examination shall be on a form prescribed by the Board. The provisions of Rule III, Section 1 shall apply to applications for admission by examination. (Effective November 1, 1991.)

Section 2. Examination applications for applicants who have filed law student registrations.

Those applicants who have previously registered as law students under Rule III, Section 2(A) and those law students who previously registered late under Rule III, Section 3, must file with the Board an Application for Admission by Examination, designating the examination for which applicant desires to sit. Each Application for Admission by Examination must be accompanied by a fee of $525.00, which shall be in addition to registration fees due under Rule III, Sections 2(A) and 3. (Money order, certified check or cash only.) Application must be filed with the Board on or before September 1st preceding the

February examination for which applicant wishes to sit, or on or before February 1st preceding the July examination for which applicant wishes to sit.

Any law student who has not filed a law student application under Rule III, Section 2(A) or 3, must file the Application for Admission by Examination under Rule IV, Section 3 below. (Effective November 1, 1991; amended effective July 1, 1999; amended effective August 24, 2000, for applications for the February 2001 and subsequent examination; amended effective April 15, 2004, for applications for the February 2005, and subsequent examinations; amended effective July 10, 2009; amended effective July 1, 2010, to move the deadline for filing applications.)

Section 3. Examination applications for applicants not registering as law students.

Any applicant who has not previously filed an Application for Registration as a Law Student as provided in Rule III, Section 2(A) or 3, must file a completed Application for Admission by Examination with the Board on or before September 1st preceding the February examination for which he or she wishes to sit or on or before February 1st preceding the July examination for which he or she wishes to sit. A filing fee of $825.00 must accompany the Application. (Money order, certified check, or cash only) Applicants admitted in other jurisdictions may be required to pay additional fees for character investigations. Such applicants must contact the Board of Bar Admissions Office for the amount of the additional fees required, if any. (Effective November 1, 1991; amended effective July 1, 1999; amended effective August 24, 2000, for applications for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective July 10, 2009.)

Section 4. Late applications for general bar examination.

Any applicant who failed to file a timely Application for Admission by Examination under Section 2 or Section 3 above may file a late Application for Admission by Examination with the Board from September 2nd to November 1st preceding the February examination for which he or she wishes to sit or February 2nd to April 1st preceding the July examination for which he or she wishes to sit. A filing fee of $725.00 must accompany the Application if the applicant has previously registered as a law student as provided in Rule III, Section 2(A) or 3, or by a filing fee of $1,025.00 if the applicant has not previously registered as a law student as provided in Article III, Section 2(A) or 3. Applicants admitted in other jurisdictions may be required to pay additional fees for character investigations. Such applicants must contact the Board of Bar Admissions Office for the amount of the additional fees required, if any.

When an Application for Admissions by Examination is filed later than the prescribed deadlines the Board may act, but shall not be required to act, upon such application in time to permit the applicant to take such approaching examination.

However, under no circumstances will an application to sit for the examination be accepted after the prescribed late deadlines in this Section. (Effective November 1, 1991; amended effective July 1, 1999; amended effective August 24, 2000, for applications for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective July 10, 2009.)

Section 5. Qualifications for examination applicants.

An application for admission to the Bar by examination may be filed by an individual who:

A. is 21 years of age:

B. has received a bachelor's degree from an accredited college or university or has received credit for the requirements of the first three (3) years of college work from a college or university offering an integrated six-year prelaw and law course, and has completed his law course at a college or university offering such an integrated six-year course; and

C.(1) has successfully completed, or (2) at the time of taking the bar examination, will be within sixty (60) days of completion of, a general course of study of law in a law school which is provisionally or fully approved by the Section on Legal Education and Admission to the Bar of the American Bar Association. Any applicant filing an exam application under Subsection 1(C)(2) of this Rule shall file with the Board on a form prescribed by the Board, a statement requesting to take the bar exam pursuant to the above Rule and must request the dean or registrar of his law school to file with the Board, on a form prescribed by the Board, a certification stating that said applicant should complete his course of study on or before sixty (60) days from the date of the examination for which the applicant is registered. At the completion of said course and within sixty (60) days after the exam date, the applicant must request his law school dean or registrar to file with the Board a "Certificate of Completion" evidencing the satisfactory completion of such course of study within the prescribed sixty (60) day period. A Certificate of Eligibility for Admission will not be issued to applicant without the final certification from his law school dean or registrar. Failure to complete the course of study within sixty (60) days of the examination and to have the dean or registrar of the applicant's law school so certify shall render the applicant's results on the subject examination void. (However, an applicant who, as of November 1, 1981, was or had been previously enrolled in a law school in active existence in Mississippi for more than ten (10) years prior to the date of application shall be eligible for examination for admission; provided that such an applicant must have graduated from such law school prior to November 1, 1984). (Effective November 1, 1991.)

Section 6. Re-examination deadlines and fees.

Any applicant who fails the bar examination shall be allowed to take the next scheduled examination without further investigation as to his character and fitness unless additional information requiring investigation comes to the attention of the Board.

The applicant must file an application on a form provided by the Board for re-examination with a fee of $550.00 (money order, certified check, or cash only) by November 1st preceding the February examination and by May 1st preceding the July examination. (Effective November 1, 1991; amended effective July 1, 1999; amended effective August 24, 2000, for applications for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective July 10, 2009.)

Section 7. Deferment.

If after filing an exam application, an applicant finds he is unable to take the examination on the prescribed date, a written request shall be submitted to the Board for a deferment to the subsequent exam period. One deferment will be granted an applicant without the filing of a new application or payment of additional fees. Additional deferments shall require the payment of the filing fee of $325.00 (money order, certified check or cash only). After more than one deferment, the Board may require re-investigation of the applicant's character and fitness. Failure on the part of an applicant to appear for an examination without first requesting deferment will result in the application being dismissed and the applicant will have to file a new application and pay the regular application fee for the subsequent examination. (Effective November 1, 1991; section renumbered effective December 9, 2004; amended effective July 10, 2009.)

Editor's Note — A former section 7 was deleted effective December 9, 2004, removing the requirement of additional study after three unsuccessful attempts to pass the examination.

Section 8. Re-Examination in Excess of Three [Applicable to applications for and after the February 2020 Mississippi Bar Examination].

An applicant who has unsuccessfully taken the Mississippi Bar Exam three (3) times shall not be eligible for re-examination until he or she has successfully completed a least twelve (12) additional semester hours of law school courses at an ABA accredited law school relevant to subjects covered by or skills necessary to the passage of the Mississippi Bar Examination. A certificate must be issued to the Board of Bar Admissions by the law school stating that the applicant has successfully completed these classes. Satisfaction of this requirement shall permit the applicant to retake the Mississippi Bar Examination on one (1) additional occasion. To be eligible for further re-examination, the applicant must comply with the requirements set forth above between each unsuccessful examination attempt. (Applicable to applications for and after the February 2020 Mississippi Bar Examination.)

Section 9. Examination of disbarred attorneys.

A disbarred attorney seeking reinstatement to the Mississippi Bar pursuant to Rule 12 of the Mississippi Rules of Discipline shall file with the Board of Bar Admissions an application to take the Mississippi Bar Examination on or before January 1st preceding the February examination for which such applicant proposes to sit or on or before June 1st preceding the July examination for which such applicant proposes to sit. The form of such applications shall be prescribed by the Board. The application must be accompanied by an examination fee of $525.00 (money order, certified check, or cash only) payable to the Board of Bar Admissions. The Mississippi Bar Examination shall be administered and graded for such applicants in the same manner as for applicants for new admission. The results shall be reported to the applicant, to the Clerk of the Mississippi Supreme Court, and to the Board of Bar Commissioners. The same procedures and fees, where applicable, for deferrals, petitions for review, appeals, and re-examination applicable to applicants for admission through the regular bar examination shall be applicable to applicants for examination under this Rule. (Adopted effective December 31, 1992; amended effective August 24, 2000, for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; section renumbered effective December 9, 2004; amended effective July 10, 2009.)

RULE V. DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

Section 1. Penalty for failure to disclose information.

No one shall be licensed to practice law in this state:

A. Who fails to disclose fully to the Committee and Board, whether requested to do so or not, the facts relating to any disciplinary proceedings or charges as to his professional conduct, whether same have been terminated or not, in this or any other state, or any federal court or other jurisdiction, or

B. Who fails to disclose fully to the Committee and Board all facts relating to any civil or criminal proceedings or other material information concerning his character and fitness called for by these Rules or by the application forms.

In the event an applicant shall fail to fully, timely and faithfully comply with the requirements of Rule III, Section 1, his application will be deferred to a future bar exam, if such failure comes to the attention of the Board prior to the administration of the bar examination. If such failure comes to the attention of the Board after the applicant has taken the bar examination, the Board may order that his result on that bar examination be deemed void. If such failure comes to the attention of the Board after the applicant has been admitted to the Bar, the Board may file a complaint with the appropriate disciplinary authorities.

The Committee and Board shall consider an applicant's failure to disclose material information in making its determination of whether the applicant has the requisite character and fitness to be admitted to the Bar. The Board may excuse the failure to disclose information and suspend the operations of the preceding portions of this Section only if it determines that the information which the applicant failed to fully and timely disclose or supplement is not significant or germane to the applicant's character and fitness. (Effective November 1, 1991.)

Section 2. Release of confidential information.

By making application for registration as a law student or examination an applicant waives his right to confidentiality of medical/psychological communication, record, evaluations and any other pertinent medical/psychological information touching on the applicant's fitness to practice law as determined by the Board or Committee. A refusal by an applicant to furnish written release for such medical/psychological information or an applicant's objection to the disclosure of such information to the Board or Committee shall be cause for the dismissal of the application. Any written release executed by a law student registrant or examination applicant shall terminate immediately upon admission to the Bar or sixty (60) days after the application is terminated by voluntary withdrawal or by denial of admission on grounds of character and fitness. An application is not terminated until any appeal or rights to appeal have terminated. (Effective November 1, 1991.)

Section 3. Confidentiality of information and documents.

Information and documents concerning an applicant's character and fitness shall be considered confidential. Such information and documents shall not be disclosed except to members of the Board, members of the Committee on Character and Fitness, the Secretary, Special Counsel (appointed pursuant to Rule VIII, Section 5), and necessary clerical personnel authorized by the Board, Committee, or Secretary to assist in their duties. An applicant shall have the right to inspect information and documents pertaining to his application during regular business hours. Such inspection shall be by appointment with the Bar Admissions Administrator and all materials shall remain under the surveillance of the Bar Admissions Administrator during such inspection. No person shall disclose information or documents concerning an applicant's character and fitness to persons other than those listed above, except to the extent that such disclosure is necessary to the investigation of applicant's character and fitness.

In addition to the foregoing, upon proper request, the Board, at its discretion, may disclose information or documents from an applicant's file to the admitting authorities in other jurisdictions, to any disciplinary agency and to any law enforcement agency for use in connection with disciplinary or criminal proceedings against such applicant. (Effective November 1, 1991; amended effective August 24, 2001, for application for February 2001 and subsequent examinations.)

ATTORNEY GENERAL OPINIONS

Disclosure of documents from an applicant's file to a law enforcement agency is allowed in the discretion of the Board of Bar Admissions. Knight, Apr. 19, 2002, A.G. Op. #02-0195.

Section 4. Records.

A This Section establishes the rules and procedures governing the inspection, copying, and/or reproduction of any Public Records, as defined by the Mississippi Public Records Act of 1983, Miss. Code Ann. § 25-61-1, et seq., (1972, as amended), (the "Act"), in the possession of the Mississippi Board of Bar Admissions (Board) which are required or allowed to be examined and copied as Public Records under said Act, subject to any exemptions or exceptions thereto.

B. The following non-inclusive list of records of the Board are not Public Records and will not be made available, to-wit:

(1) Applications for licensure;

(2) Records concerning an applicant's character and fitness;

(3) Test questions and answers/analyses unless previously made public by the Board;

(4) Recommendations concerning an applicant from any source;

(5) Bar examination answers and scores of applicants;

(6) Those items exempted from inspection and production by *Miss. Code Ann.*§ 9-1-38 (1972, as amended), and including, but not limited to, the internal communications between or among Board members, or between or among Board members and the staff or employees of the Board, or between or among members of the staff or employees of the Board concerning any application for admission or any matter defined herein as not being a Public Record. This Section 4 shall also apply to the notes or other memoranda prepared by or for the use of Members of the Board in regard to any application for admission or any matter defined herein as not a Public Record. (For the purposes of this Section 4, members of the Committee on Character & Fitness and special counsel to said Committee shall be treated as Members of the Board.);

(7) Personnel records exempted under *Miss. Code Ann.*§ 25-1-100 (1972, as amended);

(8) Attorneys' work product exempted under *Miss. Code Ann.*§ 25-1-102 (1972, as amended);

(9) Academic records exempted under *Miss. Code Ann.*§ 37-11-51 (1972, as amended);

(10) Criminal investigation records exempted under *Miss. Code Ann.*§§ 45-29-1 and 3 (1972, as amended);

(11) Licensure application and examination records exempted under *Miss. Code Ann.*§ 73-52-1 (1972, as amended);

(12) Commercial and financial information exempted under *Miss. Code Ann.*§ 79-23-1 (1972, as amended); and

(13) Any other record or records which are confidential, privileged or otherwise exempt pursuant to these Rules or the laws of the State of Mississippi or the United States, or any records which the Board has declared confidential as a condition to obtaining them.

C. All requests shall be in writing describing the information sought with sufficient specificity that the Board is able to determine the precise information requested.

D. The Board shall respond to a request for access to records within fourteen (14) working days of the receipt of such request.

E. If any record, requested as provided for herein, cannot be produced for any reason, the Board shall provide a written response with the specific reasons therefor.

F. Upon compliance with the other provisions of this Rule:

(1) Public Records of the Board will be available for inspection and copying during regular business hours (8:00 a.m. - 5:00 p.m.), Monday through Friday, by prior appointment made at least three (3) business days in advance unless otherwise authorized by the Board;

(2) All inspection, copying or reproduction shall be done in the office of the Board or such other place or in such other manner as designated by the Board, and all copying and reproduction shall be performed by employees of the Board or designees of the Board;

(3) Copies of records will be made available according to the following schedule of charges:

Retrieval of records (on-site)	$10.00
Retrieval of records (off-site)	$15.00
Regular Copying of printed material (per page)	$0.50
Copying from bound volumes or records (per page)	$2.00
Printing of electronically maintained records (per page)	$1.00
Minimum Copy/Printing Charge	$1.00
Certification of Record (per record)	$25.00
Fax Transmission Fee (per fax, 5 page maximum)	$5.00
Email Transmission Fee (per record)	$1.00
Postage, delivery charges (e.g., FedEx, UPS)	Actual charges + $5.00

For each Public Record produced the requesting party shall pay the applicable retrieval fee, together with all applicable copying charges and transmission or delivery charges per the above schedule. For any services rendered other than those listed in the schedule above, the requesting party shall pay the cost of providing such services as determined by the Board.

(4) No services will be provided until payment in full of the estimated costs of providing the services is made. Any charges in excess of the estimate shall be made in full at or prior to the time of delivery. (Effective July 1, 2010, to add Section 4 in its entirety.)

RULE VI. ADMISSION BY COMITY AND RECIPROCITY

Section 1. Qualification of applicant.

A. Any lawyer from another state whose requirements for admission to the bar are equivalent to those of this state, who has practiced not less than five (5) years may be admitted to practice in this state without passing the general bar examination as to his knowledge of law required of all other applicants by Rule IX, upon taking and passing a written "attorneys' examination" on topics of Mississippi law and practice designated by the Board (which may consist of designated portions of the general bar examination) and upon complying with the other requirements as set out in these Rules Governing Admission to the Mississippi Bar; provided, however, that the laws of the state from which the applicant comes grants similar privileges to the applicants from this state.

B. An applicant who has failed a bar examination administered in this jurisdiction within five (5) years of the date of filing an application under this rule shall not be eligible for admission under this Rule VI.

C. An applicant who has been subject to discipline in another state for conduct which would make the applicant ineligible for admission in this state shall not be eligible for admission under this Rule VI. (Effective November 1, 1991; amended effective October 1, 2008, as set forth in the Comment; amended effective August 1, 2009.)

Cross References — Admission of lawyers from other states, see § 73-3-25.

Attorneys from other states being allowed to appear and plead in special causes, see § 73-3-39.

Section 2. Application.

Any lawyer from another state desiring to practice in Mississippi must make application to the Board on the same forms as required of applicants for admission by general bar examination. Such application shall be subject to the provisions of Rule III, Sections 1 and 4 and Rule V. In addition, such applicant, shall file with the Board evidence of his good standing to practice law in the states in which he has previously been admitted, including a certificate from the Clerk of the highest appellate court of each state in which he has been admitted and from two (2) members of the bar in each such state, certifying to his qualifications and good standing. The completed application of an attorney desiring to sit for the special "attorneys' examination" administered as part of the regular February bar examination must be filed on or before September 1 preceding the February examination. The completed application of an attorney desiring to sit for the special "attorneys' examination" administered as part of the regular July bar examination must be filed on or before April 1 preceding the July examination. The Board of the Committee on Character and Fitness may make additional inquiry as to the qualifications, good standing, and moral character of the applicant and may require submission of additional evidence by the applicant. (Effective November 1, 1991; amended May 18, 1999, effective July 1, 1999 for applications for the February 2000 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective October 1, 2008, as set forth in the Comment.)

Section 3. Late applications.

Any applicant who failed to file a timely application for the special "attorneys' examination" under Section 2 above, may file a late application with the Board from September 2nd to November 1st preceding the February special "attorneys' examination" for which he or she wishes to sit or February 2nd to April 1st preceding the July special "attorneys' examination" for which he or she wishes to sit. (Amended effective August 24, 2000, for applications for the February 2001 and subsequent examinations; amended effective October 1, 2008, as set forth in the Comment.)

Section 4. Fees.

Each application for admission by comity and reciprocity filed by the deadlines set forth in Rule VI, Section 2, must be accompanied by a fee of $1,000.00, plus an additional fee in such amount as the National Conference of Bar Examiners may charge in connection with a character investigation in jurisdiction(s) in which the attorney applicant has been previously admitted. The Board may in its discretion, for good cause shown, accept applications for admission by comity and reciprocity filed after the deadlines set forth in Rule VI, Section 2, provided that such application must be accompanied by a filing fee of $1200.00, plus an additional fee in such amount as the National Conference of Bar Examiners may charge in connection with a character investigation in jurisdiction(s) in which the attorney applicant has been previously admitted. (Money order, certified check, or cash only.) The Board shall not accept any application for admission by comity and reciprocity not accompanied by the full amount of fees due. The Board or the Committee may require payment of additional investigation fees and costs as provided in Rule III, Section 4. Payment of the fee shall be made to the "Board of Bar Admissions." The fee is not refundable in whole or in part. (Effective November 1, 1991; amended effective August 24, 2000, for the February 2001 and subsequent examinations; amended effective April 15, 2004, for applications for the February 2005 and subsequent examinations; amended effective October 1, 2008, as set forth in the Comment.)

Section 5. Conflict of laws among states concerning reciprocity and comity.

If the jurisdiction from which the applicant comes permits the admission of Mississippi judges and lawyers by comity and reciprocity but the rules of such jurisdiction are more stringent and exacting or condictions of admission or require payment of higher fees, the admission of applicant shall be governed by such rules and he shall pay the same fees which would apply to the applicants from Mississippi seeking admission to the bar in the applicant's former jurisdiction. (Effective November 1, 1991; amended effective April 15, 2004 to renumber sections; amended effective October 1, 2008, as set forth in the Comment.)

Section 6. Applicant licensed to practice by more than one state.

If an applicant has been licensed by more than one state, the Board shall determine in its discretion the licensing state to which reference shall be made in determining whether to admit an applicant by comity and reciprocity. (Effective November 1, 1991; amended effective April 15, 2004 to renumber sections; amended effective October 1, 2008, as set forth in the Comment.)

RESEARCH REFERENCES

ALR. Sexual conduct or orientation as ground for denial of admission to bar. 105 A.L.R.5th 217.

Falsehoods, misrepresentations, impersonations, and other irresponsible conduct as bearing on requisite good moral character for admission to bar — Conduct related to admission to bar. 107 A.L.R.5th 167.

Failure to pay creditors as affecting applicant's moral character for purposes of admission to the bar. 108 A.L.R.5th 289.

Section 7. Definition of practice of law.

For purposes of admission under this Rule, practice for not less than five (5) years must consist of active practice of law, after admission to the bar of another jurisdiction, either as a partner or associate of a private or public law firm, as a legal officer of a corporation or other business organization, as a governmental employee whose duties are primarily providing legal advice or representation of the governmental agency in the courts, as a legal officer in the Armed Services, as a judge, magistrate, administrative judge or referee, or law clerk to a judge, or as a full time teacher in a law school approved by the Section on Legal Education and Admission to the Bar of the American Bar Association. Practice of law which qualifies for purposes of this Rule must have occurred within a state or states in which the applicant was then admitted to practice law and must have occurred while applicant was licensed by and in good standing with the court or other agency having authority over the practice of law in such jurisdiction. (Effective November 1, 1991; amended effective April 15, 2004 to renumber sections; amended effective October 1, 2008, as set forth in the Comment.)

COMMENT

This amended rule does away with the requirement of a one (1) day attorney's examination on topics of Mississippi law for attorneys seeking to establish a practice in Mississippi and returns the rule to its pre-1979 format of allowing complete reciprocity with other states granting similar privileges to Mississippi lawyers. The amended rule requires that any lawyer from another state which requires

Mississippi attorneys to be examined before admission must take the entire Mississippi Bar Examination.

It is not the intention of this rule to provide an alternative means of admission for temporary practice in Mississippi, which is governed by the pro hac vice admission rules of the Mississippi Rules of Appellate Procedure.

The five (5) year practice of law requirement contemplates that the work done by the applicant be of a general legal nature but not work that is very narrow in scope, is of a type which need not be performed by an attorney, or does not generally require the services of an attorney. An attorney's five (5) years of prior practice must have constituted a full-time or regular undertaking and not have been on only an occasional or haphazard basis.

For the purposes of this Rule, the active practice of law does not include work that, as undertaken, constituted the unauthorized practice of law in the jurisdiction in which it was performed or in the jurisdiction in which the clients receiving the unauthorized services were located.

(Amended effective August 1, 2009.)

RULE VII. PROTEST OF APPLICATION

Section 1. Nature of protest.

Any person may protest the application of any applicant to be admitted to the practice of law either by examination or by comity and reciprocity. (Effective November 1, 1991.)

Section 2. Format.

A protest shall be made in writing, signed by the person making the protest and bearing his home and business address, and shall be filed with the Board prior to the date on which the applicant is to be examined or within sixty (60) day after the filing of an application by an attorney for admission by comity and reciprocity. (Effective November 1, 1991.)

Section 3. Notification: right to withdraw.

The Executive Assistant shall, as soon as practical, notify the applicant of the protest and of the charges therein made; and the applicant thereupon may file with the Board a written withdrawal as a candidate for admission to the practice of law. (Effective November 1, 1991.)

Section 4. Hearing.

In case the applicant does not withdraw as a candidate for admission to the practice of law, the person or persons making the protest and the applicant in question shall appear before the Committee at a time and place to be designated by the Committee. In the event time will not permit a hearing on the protest, and a final determination prior to a scheduled examination, the applicant may not take the written examination unless the Board finds exceptional circumstances justifying the taking of the examination; however, if the applicant passes the written examination, no license to practice law shall be issued to him until final disposition of the protest in favor of the applicant. (Effective November 1, 1991.)

Section 5. Withholding certification.

Nothing herein contained shall prevent the Board on its own motion from withholding its certification of the applicant until it has been fully satisfied as to the moral fitness of the applicant. (Effective November 1, 1991.)

RULE VIII. COMMITTEE ON CHARACTER AND FITNESS

Section 1. Appointment — Term of office.

There is hereby created a committee to be known as the "Committee on Character and Fitness" which shall be appointed by the Board. Members of the Committee shall be members in good standing of the Mississippi Bar. At least three (3) members shall be appointed from each of the Supreme Court Districts, provided, however, that the Board in its discretion may appoint more than three (3) members from any Supreme Court District. Members shall serve for terms of three (3) years provided that initial appointments shall be made for terms of one (1), two (2), or three (3) years so that expiration of terms shall thereafter be staggered. Vacancies during a term shall be filled by the Board for the remainder of the unexpired term. (Effective November 1, 1991.)

Section 2. Officers.

The Board shall designate a Chairman and Vice-Chairman of the Committee on Character and Fitness. The Chairman shall serve as an ex officio non-voting member of the Board. The Chairman shall be responsible for the overall operation and coordination of the Committee's work. The Chairman shall be responsible for calling and presiding over meetings of the Committee. The Chairman of the Committee, or in his absence the Vice-Chairman, shall certify all recommendations concerning applicants to the Board. The Bar Admissions Administrator or other designated employee of the Board of Bar Admissions shall serve as Secretary to the Committee on Character and Fitness. (Effective November 1, 1991.)

Section 3. Division into subcommittees.

The Committee shall act on individual applicants through subcommittees consisting of the members from any one Supreme Court District. Such a Subcommittee shall have all the rights, powers and obligations of the entire Committee. The Board shall select one of the Committee members from each District as Subcommittee Chairman who shall be responsible for receiving referrals of applicants from the Bar Admissions Administrator, for calling and presiding over meetings of the Subcommittee and for reporting the recommendations of the Subcommittee to the Chairman of the full Committee, who shall certify the recommendations of the Subcommittee to the Board, as the recommendation of the full Committee, unless in the Chairman's opinion special circumstances require that the recommendation of the Subcommittee be reconsidered by the full Committee. (Effective November 1, 1991.)

Section 4. Referral of applications.

Law student registration applications (as provided in Rule III), applications for admission by examination (as provided in Rule IV), applications for admission by comity and reciprocity (as provided in Rule VI), together with any other materials relevant to the application, shall be referred to the subcommittee of the Committee on Character and Fitness for the Supreme Court District in which the applicant resides. In the case of non-residents, applications will be divided among the subcommittees. The application shall be referred as soon as practicable after all required materials are filed with the Bar Admissions Administrator. The Bar Admissions Administrator may, in his discretion, also send additional copies of the application to the subcommittee for any other District with which the applicant appears to have substantial contacts. A list of all applicants regardless of District of residence shall be simultaneously circulated to all members of the full Committee, and the Committee members from other Districts having information relevant to the applicant's character and fitness shall provide such information, as soon as practicable, to the Chairman of the subcommittee to which the application has been referred. (Effective November 1, 1991.)

Section 5. Duties and powers.

A. *Investigation.* The Committee on Character and Fitness, or its subcommittees, shall consider applications at such time and place and in such manner as it may elect, and may require the personal presence of any applicant at such time and place as the Committee may prescribe for interview and examination touching on his character and fitness. The Committee may also propound written interrogatories, requests for admissions and requests for production of documents to be answered by applicant under oath within thirty (30) days of service thereof. The Committee may take evidence under oath before a court reporter or notary public and shall have the power to compel attendance of witnesses and the production of documents by the filing of a praecipe for a subpoena with the Clerk of the Supreme Court. The committee shall also have the power to receive information touching on the character and fitness of any applicant from any source deemed relevant and reliable by the Committee and to give such information the weight and credibility which the Committee deems proper.

B. *Meetings and votes.* The Committee, or the subcommittees thereof, shall act upon each application at a special or regular meeting at which a quorum is present. A quorum for a meeting of the Committee shall be five (5) members. A quorum for a meeting of a subcommittee shall be three (3) members. Action on any matter may be taken by a majority vote of a quorum. However, the members of the Committee or of a subcommittee may separately and without assembling in meeting consider any application together with the data submitted in support of such application by written or oral poll conducted by the Chairman. Any unanimous action of the Committee or subcommittee, so taken, shall constitute valid action, but if such is not unanimous, the

Committee, or subcommittee shall further consider and act upon such application in meeting assembled.

C. *Special counsel.* In cases where the Committee, or subcommittee thereof, deems a formal hearing to be necessary, the Committee, or subcommittee, may appoint an attorney to appear on a voluntary basis as Special Counsel for the purpose of preparing and presenting evidence concerning applicant's character and fitness. Such counsel shall be an attorney in good standing with the Mississippi State Bar Association and shall have no conflict of interest in regard to application under consideration.

D. *Procedure at formal hearings.* During formal hearings before the Committee, or its subcommittees, an applicant shall have the right to be represented by counsel, to call and examine witnesses, to introduce exhibits, to cross-examine witnesses on any matter relevant to the issues, even if not covered in direct examination, to impeach the credibility of any witness regardless of by whom called and to rebut the evidence against him. The applicant may be called and examined as if under cross-examination whether or not he testifies on his own behalf. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient standing alone to support a finding unless it would be admissible over objection in civil actions. Except as required to be waived under other provisions of these Rules, the rules of privilege shall be effective to the extent that they are required by civil rules to be recognized. Irrelevant and unduly repetitious evidence shall be excluded. Hearings shall be private unless the applicant shall request that they be public. A complete stenographic record of the hearing shall be kept, and a typescript may be ordered by the applicant at his or her own expense.

E. *Reports.* The Committee shall report to the Board its recommendations as to approval or disapproval of each law student registrant and each applicant for admission by examination. Recommendations shall be filed with the Board as soon as reasonably practical after the completed application is referred to the Committee, provided that the Committee shall file with the Board not later than thirty (30) days before the examination at which the applicant purposes to sit, a recommendation with respect to each applicant who has filed a timely Application for Admission for that examination. If the Committee has not been able to complete its investigation of an applicant before thirty (30) days prior to the examination, the Committee shall so report to the Board along with the status of the case and a recommendation as to whether the applicant should be allowed to take the examination pending the outcome of the investigation. (Effective November 1, 1991; amended effective August 24, 2000.)

Section 6. Standards for disqualification of applicant.

The Committee shall recommend that the applicant not be admitted to practice law in Mississippi if, in the judgment of the Committee, the applicant has exhibited conduct substantially evidencing an inclination:

A. To be dishonest;

B. To take unfair advantage of others;

C. To be disloyal to those to whom loyalty is legally owed;

D. To be irresponsible in business or professional matters;

E. To support or advocate the overthrow of the government of the United States by force;

F. To unlawfully engage in the practice of law while not being so licensed;

G. To violate reasonable rules of conduct governing any activity in which applicant has been engaged;

H. To fail to exercise substantial self-control, including excessive and continuing violation of traffic rules, the improper use of drugs, and the excessive use of alcohol;

I. To be mentally or emotionally unstable to the extent that applicant is not suited for the practice of law.

Every person who has been or shall hereafter be convicted of a felony, in a court of this or any state or a court of the United States, manslaughter or a violation of the Internal Revenue Code excepted, shall be incapable of obtaining a license to practice law.

Conviction for manslaughter or a felony violation of the Internal Revenue Code or commission of acts constituting felonious conduct not resulting in a conviction or the conviction of a misdemeanor involving moral turpitude may constitute grounds for denial of an application for admission to practice.

The commission of acts while a juvenile which, if done by an adult, would be the equivalent of such crimes shall be grounds for recommending that applicant be denied the right to practice law, unless special circumstances in the opinion of the Committee excuse the applicant.

A final decision having the legal effect of acquitting an applicant of an alleged offense shall not affect the right of the Committee to consider the alleged conduct, unless the decision is directly on the merits and necessarily negates any immoral or unethical conduct.

The doing of any act which would be a crime except as excused by mental condition may be considered as a ground for recommending denial of the application.

Provocation, if established to the satisfaction of the Committee, may be considered as excusing some types of improper conduct, such as minor batteries and other actions indicating a temporary loss of self-control.

Any conduct of a kind which has been considered by the Supreme Court of Mississippi as ground for suspension or revocation of the right to practice law may be considered as sufficient to recommend denial of an application for admission. If an applicant has at any time committed acts or offenses not constituting a felony or misdemeanor, which would have been grounds for disbarment of a practicing attorney, such applicant shall be required to meet the same standards as a disbarred attorney would be required to meet for readmission in order for the Committee to make a favorable recommendation.

The Committee shall consider whether or not the past conduct of the applicant is likely to be repeated in the future and whether the applicant's past conduct evidences applicant's character and fitness to practice law. If applicant is found to have engaged in conduct which at that time would have constituted grounds for an unfavorable recommendation, then applicant must affirmatively show that his character has been rehabilitated and that such inclination or instability is unlikely to recur in the future. The mere fact that there has been no repeat of any such conduct or other conduct evidencing unfitness to practice law shall not in and of itself be sufficient to constitute rehabilitation or proof of good character.

The following conduct, while not proper, will not in and of itself be considered as indicating a lack of moral or ethical qualification:

1. Traffic violations unless involving substantial disregard of the rights of others or evidencing substantial or continuing lack of self-discipline;
2. Conduct involving domestic relations unless under circumstances indicating violation of criminal law or disregard of moral obligations under circumstances where no reasonable provocation exists;
3. Conduct in the nature of horseplay;
4. Misconduct remote in time unless felonious in nature or recently repeated in similar acts. (Effective November 1, 1991.)

JUDICIAL DECISIONS

Constitutionality.

A state's system for screening applicants for admission to the bar, including questions to the applicant as to his willingness to take an oath supporting the federal and state constitutions, his good faith in doing so, his membership in organizations advocating violent or unlawful overthrow of the government with knowledge of such aims, and his specific intent to further such aims, would not be declared invalid as necessarily having a chilling effect upon the exercise of First Amendment freedoms, where it was apparent that state agents had been scrupulous in the use of their powers, keeping their investigations within constitutionally permissible limits, and where there was no showing that any applicant had been unjustifiably denied admission under the system, since the choice of screening system rests with the legislatures and other policy-making bodies of the states rather than with the United States Supreme Court. Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154, 91 S. Ct. 720, 27 L. Ed. 2d 749 (1971).

Under the First and Fourteenth Amendments, an applicant for admission to the state bar could not be denied admission merely because she refused to answer the question whether she had ever been a member of an organization which advocated overthrow of the United States Government by force or violence, where, because of a state law providing that it shall be perjury to answer the bar committee's questions falsely, the question would require the applicant to make a guess at her peril as to whether any organization to which she had belonged was one advocating such overthrow, and where, in response to another question, the applicant had listed by name all of the organizations with which she had been associated since the age of 16. Baird v. State Bar of Ariz., 401 U.S. 1, 91 S. Ct. 702, 27 L. Ed. 2d 639 (1971).

Section 7. Burden of establishing character and fitness.

The burden is on the applicant to establish to the reasonable satisfaction of a majority of the Committee that he possesses such character and qualifications as to justify his admission to the Bar and qualify him to perform the duties of an attorney and counselor at law. (Effective November 1, 1991.)

Section 8. Recommendations on character and fitness.

A. *Form of favorable recommendations.* The Chairman of the Committee shall certify to the Board the name of each applicant whose application has been approved by the Committee on Character and Fitness. The Chairman of the Committee shall simultaneously therewith return to the Bar Admissions Administrator all materials relating to the application.

B. *Form of unfavorable recommendations.* In the case of an application which the Committee disapproves for admission to the Bar, the Chairman shall file with the Board a complete report setting forth the grounds and evidentiary basis for disapproval and attaching thereto all materials relating to the application.

C. *Board action.* The Board, after receiving the recommendations of the Committee on Character and Fitness, shall enter an order approving or denying the application. In making its decision, the Board may make such additional investigation as it deems appropriate. The Bar Admissions Administrator shall notify the applicant of the Board's decision. Denial of an application for registration as a law student shall constitute notice to the applicant that any subsequent application for admission will be denied by the Board on the same grounds. (Effective November 1, 1991.)

Section 9. Review of adverse determination on character and fitness.

An applicant may request a review of the decision of the Board denying his application for admission to the Bar by filing a written petition with the Bar Admissions Administrator within ten (10) days after applicant has been notified of the adverse action of the Board.

Such review shall be heard at the next regular, adjourned or special meeting of the Board held after the request for review has been filed, at which meeting the applicant may appear personally. The applicant shall be provided with a copy of the Committee's report. The applicant may file a statement, memorandum or other writing with the Board at least ten (10) days prior to the review hearing, setting forth the grounds on which the applicant seeks review and the reasons why the Board's decision should be reversed. At a review hearing, the burden shall be upon the applicant to show that the Board's denial of his application was in error. Review shall be made upon the records previously developed by the Committee on Character and Fitness. At the review hearing, the record may not be supplemented by additional evidence from the applicant or other sources. If the Board finds that further evidence should be considered, it shall remand the application to the Committee for further proceedings. Upon completion of review, the Board shall enter a final order affirming or reversing its previous action. During the pendency of review or appeal proceedings, the applicant shall not take the bar examination pending a final decision on his character and fitness. (Effective November 1, 1991.)

Section 10. Appeal from final decision of board.

An applicant whose petition for review of an adverse determination on his character and fitness has been unsuccessful and denial of the application affirmed by the Board shall have the right to appeal from the final decision of the Board to the Chancery Court of Hinds County within thirty (30) days of entry of such order of denial. The Board's decision may be reversed by the Chancery Court only if the applicant proves by a preponderance of the evidence in the record before the Board that denial of his application was arbitrary, capricious, or malicious. An appeal may be taken from the decision of the Chancery Court to the Supreme Court of Mississippi in accordance with the Mississippi Supreme Court Rules. (Effective November 1, 1991.)

Section 11. Compensation and expenses.

The members of the Committee on Character and Fitness shall receive the same compensation as established by the Supreme Court for members of the Board of Bar Admission, plus all reasonable and necessary travel expenses incurred in the performance of their duties under the provisions of these Rules. (Effective November 1, 1991.)

Section 12. Immunity.

The sworn testimony of a witness subpoenaed under these Rules or otherwise received by the Board or Committee shall be deemed testimony received in a judicial proceeding. In any action for defamation arising out of such sworn testimony, the witness shall be entitled to the defense of privilege to the same extent available to witnesses in judicial proceedings. Board and Committee members, Special Counsel, and employees and agents of the Board and Committee shall be immune from civil suit from any conduct arising out of the performance of their official duties. (Effective November 1, 1991.)

JUDICIAL DECISIONS

Challenges to denial of admission. Where plaintiff Mississippi Bar applicant, in a suit against defendant Chairman of the Mississippi Board of Bar Admissions challenged the denial of the applicant's application for admission to the Mississippi Bar under Miss. R. Admis. St. Bar II, § 3, VIII, §§ 6, 12, the federal court, sua sponte, dismissed the claim for lack of subject matter jurisdiction under 28 U.S.C.S. § 1257 because the claims focused on the application of the Mississippi Board of Bar Admissions' rules to him, not upon the promulgation or propriety of a rule, and a state court had also rejected the same claims. Dean v. Mozingo, 521 F. Supp. 2d 541 (S.D. Miss. 2007), vacated by, remanded by 326 Fed. Appx. 760, 2009 U.S. App. LEXIS 10071, 73 Fed. R. Serv. 3d (Callaghan) 684 (5th Cir. Miss. 2009).

ATTORNEY GENERAL OPINIONS

An investigator hired by the board of bar admission would be immune from a civil suit arising out of the performance of his or her official duties as long as the board's contract with the investigator creates an agency relationship. Lackey, July 8, 2005, A.G. Op. 05-0303.

RULE IX. EXAMINATION

Section 1. Requirements.

Every person desiring admission to the bar, except those exempt from the general bar examination under Rule VI, shall be required to take and pass a written bar examination in a manner satisfactory to the Board of Bar Admissions. (Effective November 1, 1991.)

JUDICIAL DECISIONS

Transfer of essay scores.

The Board of Bar Admissions' policy allowing transfers of essay scores was applied evenhandedly to all applicants, and board acted in a manner that could not be deemed arbitrary and capricious; although policy was not sanctioned by supreme court and was later eliminated by supreme court order, board did have a rational basis for allowing transfers and for the manner in which such transfers were allowed. Watkins v. Mississippi Bd. of Bar Admissions, 659 So. 2d 561 (Miss. 1995).

Section 2. Preparation of the examination.

The Chairman shall make assignments among the members of the Board concerning preparation and grading of the examination. The Board members may prepare the examination questions personally or may utilize the services of expert draftsmen to prepare bar examination questions, including out-of-state law teachers, or may use the services of the National Conference of Bar Examiners or other national agency. (Effective November 1, 1991.)

Section 3. Analysis of questions.

Before an essay question is used in the bar examination, whether drafted by a Board member or by an expert draftsman, an outline or analysis of the important points of law which should be covered by the examinee shall be prepared. Each proposed question and the outline or analysis for the grading of answers will be reviewed by at least one other member of the Board before the examination. Proposed models for grading may be adjusted and reevaluated in light of examinees' actual responses. A final version of the outline or analysis of the question used in grading answers will be filed in the Board's office by each examiner simultaneously with the submission of essay grades. (Effective November 1, 1991.)

Section 4. Time and place of examination.

A. *Regular bar examination.* The Board shall conduct a bar examination twice each year on dates to be set by the Board in February and July for the purpose of examining the applicants for license to practice law. (Until further order by the Board, the examination shall be administered on Monday, Tuesday and Wednesday of the week containing the last Wednesday in February and July.) Each examination shall be administered over a period of three consecutive days. One day of the examination will be devoted to the Multi-state Bar Examination (MBE) prepared by the National Conference of Bar Examiners and two days of the examination will consist of essay-type questions and/or written performance tests prepared by or at the direction of the Board or through the services of the National Conference of Bar Examiners.

Each applicant for admission under Rule IX at a particular administration of the Mississippi Bar Examination must take all portions of the essay and performance examination at that administration. Scores achieved on essay or performance-type questions at a previous administration may not be utilized or considered as part of an applicant's score on a subsequent administration.

B. *Utilization of previous MBE scaled score.* An applicant who has taken the Multi-state Bar Examination (MBE) prepared by the National Conference of Bar Examiners, either in Mississippi or in another jurisdiction, within the immediately preceding 20-month period may elect to utilize the scaled score which he achieved on said previous administration of the MBE in lieu of retaking MBE during current Mississippi Bar Examination. Applicant's election to utilize MBE scaled score from a previous administration must be made in a written petition received by the Board not later than thirty (30) days before the Mississippi Bar Examination at which the applicant proposes to sit. Such petition shall state the date and place at which he took the MBE and the scaled score which he achieved. In the case of a request to utilize an MBE score from another administration of the MBE in a state other than Mississippi, the applicant must attach to his petition an authorization for the Board to obtain a certification of the MBE Scaled Score attained by the applicant from the Board of Bar Admissions (or equivalent agency) of the jurisdiction in which applicant sat for the subject MBE or from the National Conference of Bar Examiners. In the event that any change occurs in the procedure for preparation, grading or scaling of the MBE which, in the opinion of the Mississippi Board of Bar Admissions, renders impossible or inaccurate comparison of scaled scores between different administrations of the MBE, the Board may terminate or modify the utilization of previous MBE scores.

C. *Multi-state Professional Responsibility Examination.* As a mandatory condition for admission to the Mississippi Bar by examination each applicant must achieve a scaled score of not less than 75 on the Multi-state Professional Responsibility Examination (MPRE) administered by the National Conference of Bar Examiners (NCBE). This score must be achieved on an administration of the MPRE within twenty-four (24) months before or within twelve (12) months after the date of administration of the Mississippi Bar Examination at which the applicant achieves a passing result. It shall be the responsibility of each applicant to register for and take the MPRE in the manner and at the time prescribed by the NCBE and to request that his scores be furnished by the NCBE to Mississippi Board of Bar Admissions. The MPRE may be taken before or after the administration of the Mississippi Bar Examination at which an applicant proposes to sit. However, applicants are strongly encouraged to take the MPRE before taking the Mississippi Bar Examination, since no applicant will receive a "certificate of eligibility for admission" until the Board receives the certification of the applicant's achieving the said minimum scaled score on the MPRE within the time period prescribed in this subpart. (Section 4A amended effective for Mississippi Bar Examinations administered in February 1992 and thereafter; Section 4B amended March 14, 1995, effective from and after July 1, 1995, but examinations administered February 1995 are to be scored according to existing rules and also by the rules in the March 14, 1995 order; amended effective April 24, 1997. Section 4C was further amended December 14, 2000 to increase the required scaled score from 70 to 75 and require that it be achieved within a stated time span; amended effective April 15, 2004; amended December 9, 2004, to delete transitional provision; Section 4A amended effective August 23, 2011 for the Mississippi Bar examinations administered in February 2012 and thereafter.)

Section 5. Subjects on the examination.

The examination shall be based upon such of the following subjects as the Board shall determine:

A. Administrative Law
B. Contracts
C. Business Organizations, including Corporations, Partnership, and Agency
D. Criminal Law and Procedure
E. Domestic Relations
F. Evidence
G. Federal Income Taxation
H. Federal Jurisdiction and Rules of Civil Procedure
I. Practice and Procedure of Mississippi Courts
J. Professional Conduct and Ethics
K. Real Property
L. Torts
M. Uniform Commercial Code
N. Constitution of the United States and the State of Mississippi
O. Wills, Estates, Trusts and Future Interests (including basic federal tax consequences)
P. Conflict of Laws
Q. Bankruptcy

The Multistate Performance Test (MPT) will measure skills required for performance of legal tasks, such as (a) problem solving, (b) legal analysis and reasoning, (c) factual analysis, (d) communication, (e) organization and management of a legal task and (f) recognizing and resolving ethical dilemmas.

Prior to the examination the Board shall indicate to all applicants for a particular examination which subjects will be covered on the portion of the examination prepared by the Board and the order and time of the examination.

The contents of the Multi-state Bar Examination (MBE), Multi-state Essay Examination (MEE), and Multistate Performance Test (MPT) shall be determined by the authorities preparing such examination. (Effective November 1, 1991; amended effective February 1, 1998.)

Section 6. Conduct of examination.

Bar examinations shall be held under the supervision of the Board, which shall be in actual charge thereof through one or more of its members or staff employees. The Chairman of the Board shall have authority to designate the duties of members of the Board with respect to the examination. The member of the Board or staff employee in charge at an examination session may be hereinafter referred to as the "examiner".

The Board may utilize such number of monitors as the Board deems necessary to assist in conducting the examinations. (Effective November 1, 1991.)

Section 7. Mode of examination.

A. *Identification procedure.* The Board shall utilize an identification procedure which shall insure the anonymity of the examinees throughout the examination and grading process.

B. *No assistance during examination.* Applicants shall not bring with them into the examination room any books, memoranda, notes, brief cases, bags, parcels, or any materials or devices to assist them in answering questions. All questions shall be answered solely from the applicant's own knowledge and without assistance from any other source. Any applicant violating this rule, or knowingly assisting another applicant in a violation of this rule, shall be given an automatic failing grade on the entire examination. The circumstances of such violation may be considered by the Board as grounds for barring such applicant from retaking the Mississippi Bar Examination at a later session.

C. *Oath of applicant.* Each applicant shall, upon concluding the last examination session, take and subscribe the following oath:

> I do solemnly swear (or affirm) that I never saw until handed me by the Examiner the questions upon which I have been examined in connection with my application for admission to the Bar, nor a copy thereof; that I have not, before my examination, received any information as to the contents of said questions, and that I did not, while said examination was in progress, use or refer to any memorandum of any kind or receive directly or indirectly, from any source whatever, any suggestion, but that I wrote each and every answer exclusively from my own knowledge.

____
Sign name (not number) of Applicant

____
Address where results of examination

are to be mailed

This paper shall be delivered to the examiner to be preserved as a part of the records of the Board.

D. *Handling of examination papers.* At the beginning of each examination session, the examiner shall deliver to the applicants a copy of the questions to be answered at that session.

The Multi-state Bar Examination (MBE) and the Multi-state Essay Examination (MEE) shall be administered in the manner prescribed therefor. No questions, answer sheets, or other materials relating to the MBE shall be copied or removed from the examination room.

Questions prepared by the Mississippi Board of Bar Admissions shall be consecutively numbered and shall be labeled as to their general subject matter. Answers to such questions shall be written in blank booklets supplied by the examiner. The applicant shall write all answers in ink. The Board may in its discretion permit applicants to typewrite their answers, in which case the Board may require payment of additional fees to defray additional expenses involved. The applicant must label and number his answers to correspond with the subject matter and numbers of that part of the examination and shall consecutively number each page of his answers to each part of the examination. The applicant shall not write his name or number, or otherwise attempt to identify himself on the pages containing his answers.

E. *Anonymity of grading.* Applicants are forbidden to identify, or attempt to identify, themselves, their identification numbers, or their answers to any member of the Board or any other person. Applicants shall not in any manner attempt to influence the grading of their examination. The circumstances may be considered by the Board as a grounds for barring such applicant from retaking the Mississippi Bar Examination at a later session.

F. *Absence from examination room.* Each applicant must complete and turn in his answer to the portion of the examination given to him before leaving the examination room, except by permission of the examiner, or unless accompanied by a monitor.

G. *Monitors.* Monitors shall perform such duties as are assigned to them by the examiner. Their purpose shall be to facilitate the conduct of the examination and to insure its integrity. Monitors shall not under any circumstances discuss the content of the examination with an applicant. Any question relating to the examination shall be referred immediately to the examiner.

H. *Special testing accommodations.* The Board, in its sole discretion, may direct that the Bar Examination be administered to applicants with disabilities in a fair and reasonable manner, but different from the manner by which it is administered to other applicants. An applicant with a disability who desires a special procedure for administration of the Examination shall so petition the Board at the time of filing his application, setting out the basis for the request and the type of special procedure which would be appropriate for his situation. Medical documentation must be submitted with the request. (Effective November 1, 1991; amended effective July 1, 2010.)

Section 8. Grading of the examination.

A. *Procedure.* All examinations (except MBE) shall be graded and reviewed by the Board or by members of the Mississippi Bar under the direction of the Board. If graders who are not members of the Board are employed they must meet the requirements against conflicts of interest applicable to members of the Board under Rule II, Section 6, above. The Board shall establish specific standards by which such graders perform their duties.

B. *Standard for grading.* Essay and performance test questions will test the applicant's ability to reason logically, to analyze accurately legal problems, and to demonstrate a knowledge of the fundamental principles of law and their application, and to perform basic legal tasks. The grade of the paper shall be measured by the reasoning power as well as by the correctness or incorrectness of the answer.

C. *Time limits for grading.* Grades, exam papers and analysis shall be returned to the Bar Admissions Administrator no later than thirty (30) days following the examination. In the event of disability of an examination grader during the performance of his duties, the Board shall determine the procedures to be followed in grading the papers involved. (Effective November 1, 1991; amended effective February 1, 1998.)

Section 9. Passing grade.

A. Answers to each of the essay examinations propounded by the Mississippi Board of Bar Admissions (hereinafter called, collectively, the "MSE") shall be assigned a score on a range of 0 to 100 points. Answers on each of the questions on the Multistate Essay Examination (hereinafter called the "MEE") and Multistate Performance Test ("MPT") shall be assigned a raw score on a range of 0 to 30 points. The Board shall have the right to make the final determination respecting all essay and performance test grades.

B. The applicant's score on each of the MSE examinations and on each question on the MEE and MPT shall be converted to the range of 0 to 200 points utilizing the MBE scaled scores of all applicants on the current Mississippi Bar Examination and the "Standard Deviation Method" described in *The Bar Examiners' Handbook* (3rd Edition, 1993 Supplement) at pp. 30:605-606, or such other standard statistical method as may be adopted by the Board. (The scores thus determined are hereinafter called "converted scores.")

C. The applicant's converted scores on all examinations on the MSE shall be averaged to determine the applicant's "Average Converted MSE Score." The applicant's converted scores on all questions on the MEE shall be averaged to determine the applicant's "Average Converted MEE Score." The applicant's converted scores on all questions on the MPT shall be averaged to determine the applicant's "Average Converted MPT score."

D. In order to pass the Mississippi Bar Examination, an applicant must achieve a combined score of 132 points (rounded to the nearest 0.1 point) on the entire examination, weighing the applicant's "Average Converted MSE Score" (determined under Item C above) as 30% of the combined score, the applicant's "Average Converted MEE Score" (determined under Item C above) as 15% of the combined score, the applicant's "Average Converted MPT Score" (determined under Item C above) as 15% of the combined score and the applicant's scaled score on the MBE as 40% of the combined score. (Effective November 1, 1991, with Section 9D(2), applied to determine results on Mississippi Bar Examination administered in July 1991 and thereafter; amended March 14, 1995 effective from and after July 1, 1995, but examinations administered February 1995 are to be scored according to existing rules and also by the rules in the March 14, 1995, order; amended effective February 1, 1998; amended effective August 24, 2000, for February 2001 and subsequent examinations.)

JUDICIAL DECISIONS

Passing grade.

Bar applicant's contention that Miss. R. Admis. St. Bar 9, § 9 required a minimum Multistate Bar Exam score to pass the bar was without merit because the rule clearly provided that an examinee had to receive a combined score of 132 points on the entire exam to receive a passing grade. Griffin v. Miss. Bd. of Bar Admissions, 113 So. 3d 1257 (Miss. 2013).

Section 10. Borderline reappraisal.

Prior to the final calculation of grades, each answer (excluding MBE) of those applicants achieving a combined score between 129 and 131.9 shall be individually reviewed by the Board. The procedures employed in such borderline reappraisal shall be determined by the Board. (Amended March 14, 1995 effective from and after July 1, 1995, but examinations administered February 1995 are to be scored according to existing rules and also by the rules in the March 14, 1995, order.)

Section 11. Examination results.

The Bar Admissions Administrator shall make a permanent record of the grades attained by each applicant and shall inform each applicant whether he has passed or failed the examination.

Each applicant failing to achieve a passing grade on the examination shall be provided (at no cost to the applicant) with a report showing his or her score on the MBE, on each of the MSE examinations, and on each question on the MEE and MPT.

An applicant receiving a passing grade on the examination may request, in writing, a report showing his or her score on the MBE and his or her combined score. A request for such report shall be accompanied by a report fee of $25.00 (money order, certified check, or cash only).

An applicant may request in writing a certification of the scaled score achieved on the MBE suitable for transfer of the applicant's MBE scaled score to another jurisdiction which accepts transfers of MBE scaled scores. A request for such a certification shall be accompanied by a score certification fee of $25.00 (money order, certified check, or cash only). (Effective November 1, 1991; amended effective August 24, 2000.)

RULE X. REVIEW BEFORE THE BOARD

Section 1. Request for copies of examination.

A failing applicant may request in writing from the Board, within thirty (30) days after the results of the examination have been made public, copies of the questions, his answers and model answers or analysis of the question used in grading the examination, which shall be provided to the applicant at his expense. A request for the copies shall be accompanied by a fee of $75.00 (money order, certified check, or cash only). In regard to the Multistate Bar Examination, the Board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the Board. (Effective November 1, 1991; amended effective July 1, 2010.)

Section 2. Petition for review.

A failing applicant may petition for a review of his examination (excluding the MBE). Such petition must be filed not later than forty-five (45) days after the date on which the Board has mailed the examination results to the applicant. (Effective November 1, 1991.)

Section 3. Content of petition.

A Petition for Review shall be verified under oath by the applicant and shall designate the specific questions claimed to have been substantially misgraded. Requests for review shall be limited to particular questions on MSE examinations and on the MEE and MPT on which the applicant received a raw score of less than 75.0% of the maximum raw score points assigned to that question.

The applicant shall attach to his Petition for Review a separate Memorandum setting forth, for each examination designated in the Petition, the grounds for his request for review. To preserve anonymity during review, the Memorandum, which will be the only part of the Petition for Review circulated among members of the Review Committee and the Board, shall not mention the applicant's name and shall not be signed. For identification purposes, the applicant will use the coded number assigned him during the grading process. The Memorandum shall particularize how the grade awarded is unjustified by the merits of the answers. The Memorandum must include such citation of legal authority or other briefing as the applicant wishes to have considered by the Board. No generalized claims, not accompanied by a specification of errors, shall be considered by the Board.

No reference to the applicant's legal education, economic status, social standing, employment, personal hardship, past performance on Bar examinations, or other extraneous factors shall be made in the Petition or Memorandum or mentioned in any way in review proceedings. No applicant shall communicate directly with members of the Board concerning his performance on the examination. Any violation of this Rule shall result in the automatic denial of the Petition for Review. (Effective November 1, 1991; amended March 14, 1995 effective from and after July 1, 1995, but examinations administered February 1995 are to be scored according to existing rules and also by the rules in the March 14, 1995 order; amended effective February 1, 1998.)

Section 4. Review by board.

Upon receipt of a Petition for Review, a review committee of not less than three (3) members of the Board shall review all papers on which the applicant alleges error in grading. The role of the Review Committee shall be to identify and consider specific errors in grading. It shall not be the function of the Review Committee merely to reconsider grades originally awarded. In the event that a majority of the members of the Review Committee find clear and manifest evidence that the applicant's papers have been substantially misgraded to such an extent that the result of the examination may have been affected, the Review Committee shall so report to the Board and the Board, as a whole, shall review the applicant's examination result. In the event that a majority of the members of the Review Committee find that the applicant's papers have not been substantially misgraded to an extent that the result of the examination was affected, such determination by the Review Committee shall be final without further action by the Board as a whole. After completion of the review process described in this Section and at least thirty (30) days prior to the administration of the next bar examination, an Order shall be entered in the Board minutes granting or denying the applicant's petition. (Effective November 1, 1991.)

RULE XI. APPEAL FROM BOARDS FINAL DETERMINATION OF FAILING GRADE

Section 1. Right to appeal.

A failing applicant who has filed a Petition for Review as provided in Rule X shall have the right to appeal from the order of the Board denying his Petition to the Chancery Court of Hinds County within thirty (30) days of entry of such order of denial. (Effective November 1, 1991.)

Section 2. Record on appeal.

The Board must within thirty (30) days after the applicants appeal is filed in Hinds County Chancery Court, or within such further time as the court may grant, file with the Court and serve upon the applicant an answer. The Board shall therewith forward to the Court applicants Petition together with copies of examination questions (excluding the MBE), model answers or other analyses used in grading the examination, and the original of applicants answers. (Effective November 1, 1991.)

Section 3. Standard of review.

The grounds of appeal shall be limited to those specified in the applicants Petition for Review before the Board. The Chancery Court shall not regrade the examination or substitute its judgment of the merits of the applicants examination for the decision of the Board. The Boards decision to fail an applicant shall be reversed by the Chancery Court only if the applicant proves by a preponderance of the evidence that the Boards denial of his Petition was arbitrary, capricious or malicious. An appeal may be taken from the decision of the Chancery Court to the Supreme Court of Mississippi in accordance with the Mississippi Supreme Court Rules. (Effective November 1, 1991.)

JUDICIAL DECISIONS

Illustrative cases.

Applicant whose exam showed little understanding of certain subject areas, and challenged his failing grade on the bar exam, was not entitled to have courts regrade his examination. Mississippi Bd. of Bar Admissions v. Applicant F, 582 So. 2d 377 (Miss. 1991), cert. denied, 502 U.S. 984, 112 S. Ct. 591, 116 L. Ed. 2d 616 (1991).

RULE XII. CERTIFICATION OF ELIGIBILITY FOR ADMISSION

The Board, upon finding the applicant qualified for admission by examination or by comity and reciprocity, shall issue to the applicant a "Certificate of Eligibility". The applicant shall file said certificate and a Petition for Admission in the Chancery Court of Hinds County, Mississippi, or in the Chancery Court in the county of his residence, or in the case of an applicant who is a non-resident of the State of Mississippi, in the Chancery Court of a county in which the applicant intends to practice. Said Chancery Court shall, in term time or in vacation, enter on the minutes of that court an order granting to the applicant license to practice in all courts in this state, upon taking by the applicant in the presence of the Court, the oath prescribed by law, Section 73-3-35, Mississippi Code of 1972, to-wit:

> I do solemnly swear (or affirm) that I will demean myself, as an attorney and counselor of this court; according, to the best of my learning and ability, and with all good fidelity as well to the court as to the client; that I will use no falsehood nor delay any person's cause for lucre or malice, and that I will support the Constitution of the State of Mississippi. So help me God.

And thereupon the name of such person, with the date of his admission, shall be entered in a roll or book to be kept in each court for the purpose. (Effective November 1, 1991.)

RULE XIII. PRECEPTOR STUDY

An applicant who had notified the Board of Bar Admissions in writing of an intention to pursue a general course of study of law under the supervision of a

Mississippi lawyer prior to July 1, 1979, and in fact began study prior to July 1, 1979, and who completed the required course of study prior to November 1, 1984, in accordance with Miss. Code 1972, Subsection 73-3-3(b) and Subsection [Section] 73-3-15, as the same existed prior to their repeal in 1979, and who complied with former Rule XIV of the Rules Governing Admission to the Mississippi State Bar, shall be eligible for admission upon satisfaction of all requirements for admission, other than the law school education requirements set forth in Rule IV, Section 5. (Effective November 1, 1991.)

RULE XIV. EFFECTIVE DATE

The effective date of these Rules shall be November 1, 1979, and as amended through August 23, 2011.

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STATE OF MISSISSIPPI RULES AND REGULATIONS FOR MANDATORY CONTINUING LEGAL EDUCATION

Revised effective August 1, 1994; Amended effective July 1, 2015

Rule
1. Continuing Legal Education Commission.
2. Scope and exemptions.
3. CLE requirement.
4. Accreditation.
5. Annual report.
6. Non-compliance and sanctions.
7. [Deleted].

Cross References — Admission and conduct of attorneys, see Mississippi Code of 1972, § 73-3-1 et seq.

Rule 1. Continuing Legal Education Commission.

a. There is hereby established a Commission on Continuing Legal Education (hereinafter referred to as the Commission) consisting of nine (9) members who are resident members of the Bar of this state. The members shall be appointed by the Mississippi Supreme Court.

b. All appointments shall be for a term of three (3) years. Therefore, there shall be three (3) appointments each year, one from each state Supreme Court district. An appointment to fill any vacancy due to the death, resignation or disability of a member shall be for the unexpired term only.

c. The Commission shall have the following duties:

1. To exercise general supervisory authority over the administration of these rules.

2. To adopt, repeal and amend regulations consistent with these rules.

3. To make available for inspection by the Mississippi Supreme Court all minutes of the Commission, business records, and financial data.

d. *Financing.*

1. Sponsors of CLE programs to be held within the State of Mississippi shall, as a condition of accreditation, agree to remit a list of Mississippi attendees and to pay a fee of one dollar and fifty cents ($1.50) per credit hour for each State Bar member who attends the program and is subject to mandatory continuing legal education. Such lists and fees shall be submitted to the Commission within thirty (30) days of said program.

2. Individual attorneys who either attend approved CLE programs outside the State of Mississippi, or attend unapproved CLE programs within the State of Mississippi that would have been approved for credit except for failure of the sponsor to pay the fee described in the preceding paragraph, shall pay a fee of

one dollar and fifty cents ($1.50) for each credit hour claimed. Such fees shall accompany the attorney's annual report of compliance to the Commission. (Amended effective July 26, 2001.)

Regulations

1.1 The Chairman of the Commission shall be elected by the nine (9) voting members of the Commission.

1.2 The Commission shall elect a Vice-Chairman and Secretary from among its members.

1.3 The Commission may organize itself into Committees of not fewer than three (3) voting members for the purpose of considering and deciding matters submitted to them, except five (5) affirmative votes shall be necessary for any action under Rule 6.

1.4 Members of the Commission in the performance of their official duties shall be reimbursed for expenses subject to reimbursement policies set by the Commission.

1.5 The Commission may designate such staff as may be necessary and may further delegate executive authority to such staff to conduct the business of the Commission within the scope of the Rules and Regulations, subject at all times, however, to continual review by the Commission.

RESEARCH REFERENCES

ALR. Constitutional validity of continuing legal education requirements for attorneys. 97 A.L.R.5th 457.

Rule 2. Scope and exemptions.

These Rules shall apply to every attorney licensed to practice law in the State of Mississippi, except for the following persons who shall be exempt from the requirement of these rules:

a. All attorneys licensed to practice law in the State of Mississippi residing outside of the State and not engaged in the practice of law in Mississippi.

b. All attorneys licensed to practice law in the State of Mississippi residing in the state but not engaged in the practice of law in Mississippi.

c. All full-time members of the United States Armed Forces.

d. All of the Justices of the Mississippi Supreme Court, Circuit, Court of Appeals, Chancery, and County Judges, United States Magistrate Judges, Judges of the Bankruptcy Courts and the Judges of the Federal Courts. However, all members of the Judiciary are encouraged to attend and participate in continuing legal education programs.

e. The Governor of the State of Mississippi.

f. All members of the United States Senate and the United States House of Representatives.

g. All members of the bar shall be exempt from the requirement of these rules on and after their seventieth birthday.

[Effective August 1, 1994; Amended effective July 1, 2015.]

Regulations

2.1 Non-resident attorneys from other jurisdictions who are temporarily admitted to practice for a case or proceeding shall not be subject to these rules.

2.2 Any member of the Mississippi State Bar licensed to practice law in the State of Mississippi but not engaged in the practice of law in Mississippi shall endorse and claim the exemption on the Annual Report required by Rule 5.

2.3 Any full-time member of the U.S. Armed Forces shall endorse and claim the exemption on the Annual Report required by Rule 5.

[Effective August 1, 1994.]

Rule 3. CLE requirement.

a. Each attorney licensed to practice law in the State of Mississippi shall attend, or complete an approved substitute for attendance, a minimum of twelve (12) actual hours of approved Continuing Legal Education ("CLE") during each successive twelve (12) month period (the "CLE year") from and after August 1 of each year, of which one hour shall be in the area of legal ethics, professional responsibility, professionalism, malpractice prevention, substance abuse or mental health (the "ethics/professionalism hour").

b. Each attorney newly licensed to practice law in the State of Mississippi, from and after August 1, 2015, shall, by the conclusion of the second CLE year occurring after their date of admission to The Mississippi Bar, attend or complete a new-lawyer program approved by the Commission on Continuing Legal Education, which shall be comprised of a total of twelve (12) actual hours of CLE to include six (6) hours of basic skills training and six (6) hours of ethics/professionalism. Completion of the new-lawyer program shall satisfy the requirement of subsection (a) of this Rule for such newly licensed attorney for both the CLE year of admission and the next succeeding CLE year.

c. Attorneys newly licensed to practice law in the State of Mississippi, but previously admitted to the practice of law in another state, may be exempted from completing the six (6) hour basic skills training component of the new-lawyer program. To qualify for this exemption, within three (3) months of admission to The Mississippi Bar, the newly licensed attorney must submit an affidavit to the Commission on Continuing Legal Education, providing the date or dates of admission in every other state in which the attorney is admitted to practice and a declaration that the attorney has been actively engaged in the practice of law for five (5) or more years immediately prior to admission in this state. Upon submission of a timely affidavit, the newly licensed attorney shall be required to complete the six (6) hour ethics/professionalism component of the new-lawyer program within nine (9) months, after which time the attorney will be required to comply with the annual CLE requirement prescribed in Rule 3(a). Attorneys eligible for the exemption prescribed herein who fail to timely submit the required affidavit shall be required to complete the new-lawyer program in its entirety.

[Effective August 1, 1994; Amended July 1, 2010; Amended effective July 1, 2015.]

Regulations

3.1 The number of hours required means that the attorney must actually attend twelve (12) instruction hours of CLE per CLE year, with no credit given for introductory remarks, breaks, meal breaks, keynote or luncheon speakers or business meetings.

3.2 CLE hours shall be computed by the following formula:

$$\frac{\text{Total minutes of actual instruction}}{60} = \text{Total hours (rounded to nearest 1/10 of an hour)}$$

3.3 No attorney shall be permitted to claim more than six (6) hours of CLE credit through the use of satellite-transmitted or electronically recorded or reproduced material, even though same is presented by an accredited sponsor. As part of the six (6) hours an attorney may claim up to three (3) hours of CLE credit for telephone seminars and/or approved online programs. Seminars offered by satellite-transmittal, electronic reproduction, telephone or online programs must be approved by the Commission and must comply with Regulation 4.9. Approved online programs further must comply with Regulation 4.10.

3.4 Attorneys who have a permanent physical disability which makes attendance of CLE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The Commission shall review and approve or disapprove such plans on an individual basis and without delay. Rejection of any requested substitute for attendance will be reviewed as provided in Rule 6 prior to any sanction being imposed.

3.5 Other requests for substituted compliance, partial waivers, or other exemptions for hardship or extenuating circumstances may be granted by the Commission upon written application of the attorney and may likewise be reviewed as provided in Rule 6.

3.6 No credit will be allowed for self-study, except as specifically approved under Regulation 3.3 for approved on-line programs and Regulation 4.10.

3.7 Twelve (12) hours of credit in excess of the minimum annual requirement may be carried forward for credit in the succeeding CLE year. Such hours must, however, be reported in the annual report of compliance for the CLE year in which they were completed and must be designated as hours to be carried forward. This regulation applies to attorneys claiming exemptions also. Ethics hours in excess of the one-hour requirement for the year may not be carried over to another year as ethics hours, although they may be carried over as regular hours.

3.8 The maximum number of hours which may be claimed for credit in any one seminar is 18.

3.9 Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of six (6) hours of credit for each instructional hour of presentation. Presentations accompanied by one or two page outlines or not accompanied by written materials will qualify for CLE credit on the basis of three (3) hours of credit per hour of presentation. Repeat presentations qualify for one half of the credits available for the initial presentation. A maximum of twelve (12) hours of CLE credit shall be earned from teaching pursuant to these regulations in any CLE year.

3.10 No credit will be allowed for teaching a continuing legal education activity if the instructor is compensated in any manner, excluding reimbursement of reasonable and necessary expenses. Contributions of honorariums to a public service organization such as the Mississippi Bar Foundation shall preclude this regulation.

3.11 Credits may also be earned through authorship of a law journal article on matters of law published by an ABA or AALS approved law school. The Commission will award six (6) hours of CLE credit for each such article published.

3.12 Credit may be earned through service as a member of the Mississippi Board of Bar Admissions or as a bar examiner. The Board of Bar Admissions will be awarded a maximum of six (6) hours of CLE credit per CLE year for writing and grading the Mississippi Essay Examination or for grading either the Multistate Essay Examination or Multistate Performance Test including attendance at the grading seminar, unless compensated for such service excluding reimbursement of reasonable and necessary expenses.

3.12.1 Credit may be earned through service as a member of the Committee on Professional Responsibility, as a member of the Ethics Committee, as a member of the Unauthorized Practice of Law Committee, or as a member of the Professionalism Committee of the Mississippi Bar. A member of the Committee on Professional Responsibility, the Ethics Committee, the Unauthorized Practice of Law Committee, or the Professionalism Committee will be awarded a maximum of one (1) hour of CLE ethics/professionalism credit per CLE year for service on those Committees.

3.13 Credit may be earned through formal enrollment for audit or for credit for which regular fees are paid in an ABA or AALS accredited law school. Four (4) hours of CLE credit will be awarded for each credit hour of the particular course audited or taken for credit. A maximum of twelve (12) credit hours per CLE year will be awarded.

3.14 Credit may be earned through formal enrollment in a bar review course approved by the Commission. The attorney must already be admitted to practice in Mississippi or another state. Self-study bar review courses do not qualify for credit. A maximum of twelve (12) credit hours per CLE year will be awarded.

3.15 Credit may be earned through service as a member of the Supreme Court Advisory Committee on Rules. The Commission will award six (6) hours of CLE credit annually for service on this Committee.

3.16 Credit may be earned through service as a member of the Model Civil Jury Instructions Committee or the Model Criminal Jury Instruction Committee. The Commission will award six (6) hours of CLE credit annually for service on these committees.

3.17 Credit may be earned through service as Lieutenant Governor of the State of Mississippi or as a member of the Mississippi Legislature. The Commission will award six (6) hours of CLE credit annually to the Lieutenant Governor and to each attorney who certifies his/her membership in the Mississippi Senate or the House of Representatives.

3.18 Credit may also be earned through teaching a course in an ABA or AALS approved law school. The Commission will award six (6) hours of CLE credit for each hour of academic credit awarded by the law school for the course.

3.19 Full-time employees of a governmental department or agency may earn up to twelve (12) hours of credit per year by attending approved CLE activities offered by their governmental department or agency for its employees.

3.20 Part-time employees of a governmental department or agency may earn up to six (6) hours of credit per year by attending approved CLE activities offered by their governmental department or agency for its employees. (Amended effective August 1, 1995; amended January, 1998; Regulations 3.3 and 3.6 amended effective December 9, 2004, to provide for approved online programs; Regulation 3.12.1 adopted effective December 9, 2004 to allow credit for service on Committee on Professional Responsibility and Ethics Committee of the Mississippi Bar; amended effective January 25, 2007, to add professionalism as an option for CLE credit; amended effective August 1, 2008, to increase the number of hours allowed for telephone seminars and online programs; amended effective July 1, 2009 to allow one (1) hour of CLE ethics/professionalism credit for service on the Mississippi Bar's Unauthorized Practice of Law Committee.)

RESEARCH REFERENCES

ALR. Constitutional validity of continuing legal education requirements for attorneys. 97 A.L.R.5th 457.

Rule 4. Accreditation.

Credit will be given only for CLE programs approved by the Commission. Such approval normally must be sought and granted prior to the occurrence of the activity, but may be given retroactively.

Regulations

4.1 The following standards will govern the approval of continuing legal education activities by the Commission.

4.2 The activity must be effectively open to all attorneys licensed to practice law in the State of Mississippi, unless offered by a governmental department or agency for employees of the governmental department or agency. By making an application for approval by the Commission, the seminar sponsor consents to the seminar being listed on the calendar of upcoming CLE events disseminated by the Commission.

4.3 The activity must have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as an attorney.

4.4 The activity must deal primarily with matters related to the practice of law, professional responsibility or ethical obligations of attorneys.

4.5 The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing legal education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

4.6 The activity itself must be conducted by an individual or group qualified by practical or academic experience. The program, including the named advertised participants, must be conducted substantially as planned, subject to emergency withdrawals and alterations.

4.7 Thorough, high quality, readable, and carefully prepared written materials must be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Commission; mere outline without citations or explanatory notations will not be sufficient. Materials in an electronic format may be acceptable in lieu of printed material as long as the attorney consents to receive such material. Printed material must be made available to those attorneys for whom the electronic format is not satisfactory.

4.8 The activity must be conducted in a physical setting conducive to learning.

4.9 Activities offered by any sponsor must provide a qualified on-site moderator and question-and-answer session. Telephone seminars must be conducted "live," not pre-recorded, and must provide a question-and-answer session. As a minimum the activity must consist of not less than one (1) hour of actual instruction.

4.10 Each online program or online seminar will be reviewed for approval on a case by case basis. The course content, interactivity, as well as the effectiveness of the delivery method will be considered in the approval process. Applications for approval must be submitted by the sponsor and submitted 30 days prior to the beginning date of the program. Applications will not be approved retroactively. Sponsors must be able to verify attorney attendance and the number of hours attended. Attorney attendance must be reported to the Mississippi Commission on CLE immediately following the conclusion of the program.

4.11 Activities that cross academic lines, such as an accounting-tax seminar, may be considered for approval.

4.12 At the conclusion of an approved program or activity, each participating attorney must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness and usefulness of the particular activity. Within thirty (30) days of the conclusion of the activity, a summary of the results of the questionnaire must be forwarded to the Commission. If requested, copies of the questionnaires must also be forwarded to the Commission. Sponsors must maintain the questionnaires for a period of 90 days following a program pending a request for submission of them to the Commission.

4.13 The costs of the program itself to the participating attorney, apart from optional meals, lodging, travel, etc., must be reasonable considering the subject matter, instructional level, etc.

4.14 Continuing legal education activities sponsored by the following organizations (hereinafter referred to as Sponsors) are presumptively approved for credit, provided the standards set out in Regulations 4.1 through 4.13 are met.

Abbott & Weems "Recent Mississippi Law"
Accredited law schools (ABA or AALS)
Alabama Institute for CLE
American Academy of Hospital Attorneys
American Academy of Judicial Education
American Agricultural Law Association
American Association of Railroad Trial Counsel
American Bar Association and Bar Sections
American Bankers Association (legal programs only)
American Business Law Association
American Board of Trial Advocates
American College of Mortgages Attorneys
American College of Probate Counsel
American College of Real Estate Lawyers
American College of Trial Lawyers
American Corporate Counsel Association
American Institute for Justice
American Institute on Federal Taxation
American Intellectual Property Law Association
American Judicature Society
American Law Institute
American Society for Law and Medicine
Association of Insurance Attorneys
Association of Trial Lawyers of America
Bar Associations of Other States, the District of Columbia, Puerto Rico and Trust Territories
Boackle, K.F.
Bureau of National Affairs
Central Mississippi Legal Services
CLE International
Commercial Law League of America Fund for Public Education
Construction Education Management Corp. (legal programs only)
Copyright Society of the U.S.A.

Council of School Board Attorneys, MS School Boards Association
Court Practice Institute, Inc.
Credit Union National Association, Inc. (legal programs only)
Cumberland School of Law Institute for CLE
Defense Research Institute
Mississippi Rural Legal Services
Eastern Mineral Law Foundation
Edison Electric Institute
Federal Bar Association
Federal Energy Bar Association
Federal Insurance Counsel
Federal Judicial Center
Federal Publications, Inc.
Food Marketing Institute
Government Institutes, Inc.
Gulf Coast Law Institute
International Association of Defense Counsel
International Association of Insurance Council
Jackson Young Lawyers Association
Law Journal Seminars Press
Legal Education Institute
Legal Sections, agency programs - U.S. and state government
Library of Congress - Legislative Service
Library of Congress (American Law Division)
Louisiana Trial Lawyers Association
Bar Association
Maritime Law Association
Medi-Legal Institute
Memphis Bar Association
Mississippi Association of County Board Attorneys
Mississippi Bankruptcy Conference
Mississippi Bar Association, and Bar Sections, Local, County and Regional Bar Associations in Mississippi
Chapter, Federal Bar Association
Mississippi College School of Law
Mississippi Defense Lawyers Association
Mississippi Institute of Continuing Legal Education
Mississippi Judicial College
Mississippi Law Institute
Mississippi Legal Services Coalition
Mississippi Municipal Attorneys Association
Oil and Gas Lawyers Association
Mississippi Pro Bono Project
Mississippi Prosecutors College
Mississippi Society of Certified Public Accountants
Mississippi Tax Institute

Mississippi Trial Lawyers Association
Montgomery County, Maryland Bar Foundation
Motor Carrier Lawyers Association
National Association of Bond Lawyers
National Association of Attorneys General
National Association of College and University Attorneys
National Association of Criminal Defense Lawyers
National Association of Railroad Trial Counsel
National Bar Association
National Business Institute
National College of District Attorneys
National College of Juvenile Justice
National Contract Management Association
National District Attorneys Association
Employment Law Institute
National Health Lawyers Association
National Institute for Trial Advocacy
National Institute of Municipal Law Officers
National Judicial College
National Legal Aid and Defender Association
National Organization of Social Security Claimants' Representatives
National Practice Institute
Rural Electric Cooperative Association (legal programs only)
New Mexico Trial Lawyers
New Orleans Orthopedic Clinic (legal programs only)
New York University School of Continuing Education in Law & Taxation
North Carolina Academy of Trial Lawyers
North Mississippi Rural Legal Services
Norton Institutes (CRR Publishing Co.)
National Association of Bond Lawyers
Patent Resources Group, Inc.
Law Institute
Prentice Hall Law and Business, Inc.
Professional Education Systems, Inc.
Professional Trial Lawyers Institute, Inc.
Rocky Mountain Mineral Law Foundation
Securities Industry Association (legal programs only)
South Mississippi Legal Services
Southeast Mississippi Legal Services
Southeastern Bankruptcy Law Institute, Inc.
Southern Federal Tax Institute, Inc.
Mississippi Legal Services
Southwestern Legal Foundation
Tennessee Association of Criminal Defense Lawyers
Tennessee Trial Lawyers Association
The National Center for Justice and the Rule of Law

The Southern California Tax & Estate Planning Forum
The Southern Trust School (Alabama)
Transportation Lawyers Association
Uniform Commercial Code Institute
University of Mississippi Center for Continuing Legal Education
U.S. League of Savings Association (legal programs only)
U.S. Department of Justice, Office of Legal Education
Veterans Administration (Office of General Counsel)
Westcott Communications

Other Sponsors may be added to this list as their identities and programs are confirmed by the Commission.

4.15 The Sponsor of an approved CLE activity may announce in informational literature or program materials as follows:

"THIS COURSE OR A PORTION THEREOF HAS BEEN APPROVED BY THE MISSISSIPPI COMMISSION ON CONTINUING LEGAL EDUCATION FOR A MAXIMUM OF ____________ HOURS OF CREDIT."

The sponsor of a CLE activity which has applied for but not received approval prior to the priniting of informational literature or program materials may announce as follows:

"THE SPONSER HAS APPLIED TO THE MISSISSIPPI COMMISSION ON CONTINUING LEGAL EDUCATION FOR APPROVAL OF THIS COURSE OR A PORTION THEREOF FOR A MAXIMUM OF ____________ HOURS OF CREDIT."

4.16 The Commission may at any time reevaluate a program and revoke approval of the Sponsor or of a particular seminar.

4.17 Any Sponsor not included in Regulation 4.14 above, desiring approval of a course, program, or other activity, will apply to the Commission by submitting a required application form and supporting documentation no less than forty-five (45) days prior to the date for which the course or program is scheduled. The Commission will advise the applicant in writing by mail within thirty (30) days of the receipt of the completed application whether the activity is approved or disapproved. Applicants denied approval of a program or activity may appeal such a decision by submitting a letter of appeal to the Commission within fifteen (15) days of the receipt of the notice of the disapproval. (Amended effective August 1, 1995; Regulations 4.7, 4.9 and 4.10 amended effective December 9, 2004 to allow limited use of approved on-line programs; amended effective July 1, 2009, to add two approved sponsors to Regulation 4.14.)

Rule 5. Annual report.

On or before August 15 of each year, each attorney admitted to practice in the State, unless exempted from making a report under the provisions of Rule 2 hereof and regulations thereunder, shall make a written report to the

Commission, in such form as the Commission shall prescribe, concerning his or her completion of accredited legal education during the CLE year having ended on July 31 of such year.

Regulations

5.1 On or before August 15 of each year, each attorney will submit a report on a form as the Commission shall provide concerning such attorney's completion of, exemption from or approved substitute for the minimum hours of instruction, including reference to hours earned during that CLE year and hours to be carried forward to the next CLE year.

5.2 The files and records of the Commission are deemed confidential and shall not be disclosed except in furtherance of the duties of the Commission; statistical abstracts may, however, be drawn therefrom in an anonymous fashion.

5.3 Each attorney failing to timely submit the reports of compliance required by Regulation 5.1 hereof shall, at the time of filing such report, pay a late fee to the Commission in the sum of Twenty-five Dollars ($25.00). The Commission shall treat all delinquently filed reports not accompanied by the late fee required hereunder as not having been filed.

Rule 6. Non-compliance and sanctions.

a. As soon as practicable after August 15 of each year, the Commission shall compile the following:

1. A list of attorneys who have filed annual reports of compliance for the next preceding CLE year ending July 31, as required by Rule 5, Mississippi Rules of Mandatory Continuing Legal Education.

2. A list of attorneys who have filed annual reports of compliance on or before the next preceding July 31 indicating that they have not complied with the requirement of Rule 3, Mississippi Rules for Mandatory Continuing Legal Education.

3. A list of attorneys who have failed to file annual reports of compliance for the next preceding CLE year as required by Rule 5, Mississippi Rules for Mandatory Continuing Legal Education.

b. The Commission shall then serve, by certified mail, each attorney whose name appears upon the lists compiled by the Commission who has not complied with Rules 3 and 5, Mississippi Rules for Mandatory Continuing Legal Education, with an Order to Show Cause, within sixty (60) days, why the attorney's license should not be suspended. Said attorney shall furnish the Commission with an affidavit:

1. Indicating that the attorney has complied with the requirement prior to expiration of the sixty (60) days, or

2. Setting forth a valid excuse for failure to comply with the requirements because of illness or other good cause.

c. At the expiration of sixty (60) days from the date of the Order to Show Cause, the Commission shall notify the Supreme Court of Mississippi of each attorney who fails to file an affidavit satisfactory to the Commission as described in (b)(1) and (b)(2) above and recommend appropriate sanctions to the Supreme Court, which may include, among others, that the attorney's license to practice law be suspended.

d. At any time after notice of noncompliance to the Supreme Court, an attorney may file with the Commission an affidavit indicating compliance with Rule 3, Rules for Mandatory Continuing Legal Education and if satisfactory to the Commission, it shall forthwith notify the Supreme Court for appropriate action, including reinstatement.

e. Administration of this program is complicated by attorneys who fail to comply with theses rules. Accordingly, the Commission and/or the Supreme Court is authorized to assess costs against such delinquent and/or non-filing attorneys in the form of a reasonable fee for filing late, filing an annual report reflecting a deficiency and/or not filing during the reporting period. Such costs can be increased proportionately by an attorney's late compliance or non-compliance for two successive CLE years.

RESEARCH REFERENCES

ALR. Discipline of attorney for failure to comply with continuing legal education requirements. 96 A.L.R.5th 23.

Rule 7. [Deleted].

[The sunset provision for the Rules was deleted by order entered October 5, 2006.]

Mandatory Continuing
Legal Education

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ACCREDITATION OF COURSES AND PROGRAMS, CLE Rule 4.

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CODE OF JUDICIAL CONDUCT

Adopted by the Mississippi Supreme Court April 4, 2002

PREAMBLE.
TERMINOLOGY.

Canon
1. A judge shall uphold the integrity and independence of the judiciary.
2. A judge shall avoid impropriety and the appearance of impropriety in all activities.
3. A judge shall perform the duties of judicial office impartially and diligently.
4. A Judge shall so conduct the Judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.
5. A judge or judicial candidate shall refrain from inappropriate political activity.
Application of the Code of Judicial Conduct.

Editor's Note — The Supreme Court of Mississippi on April 4, 2002, revised the Mississippi Code of Judicial Conduct, replacing the previous code, adopted February 15, 1995.

The Court's April 4, 2002 order adopting the Code stated: "On October 25, 2001, the draft of the proposed revised Mississippi Code of Judicial Conduct was published and comments and other suggestions were solicited from the public, the Mississippi judiciary, the Mississippi Bar, other bar organizations, and members of the bar. Comments and suggestions were received after the closure of the period for public comment and were fully considered by the Court for revision and adoption. Thereafter, by order issued on February 8, 2002, the proposed Mississippi Code of Judicial Conduct, with revisions and the proposed amendments of the associated procedural rules, were disseminated to the Conference of Circuit Court Judges, the Conference of Chancery Court Judges and the Conference of County Court Judges for review and further comments and suggestions. Further comments and suggestions were thereafter received and these also have been fully considered by the Court. The Court now finds that the adoption of this revised Mississippi Code of Judicial Conduct, the repeal of the existing Code of Judicial Conduct, and the adoption of the specified amendments to the procedural rules will promote the fair and efficient administration of justice."

The revised Code of Judicial Conduct retains three of the canons of the code it replaces and compresses the other four into only two rules. Detailed rule contents are rearranged and expanded using the model American Bar Association (ABA) Code as source and introducing several new areas of regulation. Further, in many instances, ABA language was adopted to replace the former language of some rules, often without fundamentally changing content. Among the most noticeable new elements in the revised rules are the preamble, the terminology section, the application section, and the addition of a commentary. Among the expanded rules are:

Canon 2 C, which rules that a judge shall not be a member of any organization that discriminates on the basis of race, gender, religion or national origin.

Canon 3 B (1), stating that a judge shall hear and decide matters assigned unless disqualified.

Canon 3 B (5) on impartiality and fairness in words and conduct, specifying further biases or prejudices to be avoided in a list that includes prejudice based on race, gender, religion, national origin, disability, age, sexual orientation and socioeconomic status. Judges must require the same standard of conduct of those under their control.

Canon 3 B (6) does not preclude legitimate advocacy over these factors and other similar factors if they are issues in the proceeding.

Canon 3 B (7) expands and strengthens the rules on ex parte communication.

Canon 2 B (8) states that a judge shall dispose of all judicial matters promptly, efficiently and fairly.

Canon 3 B (10) rules that a judge shall not commend or criticize jurors for their verdict.

Canon 3 B (11) lists the adjudicative responsibility of not disclosing or using, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

Canon 3 C (5) describes how a judge should deal with the appointment to a position of a major donor if the judge knows the donor has contributed to his election campaign.

Canon 3 D details a judge's disciplinary responsibilities with respect to conduct violations by other judges and by lawyers for which the judge is covered by an absolute privilege.

Canon 3 E, on disqualification, repeats the provisions of current rules but adds a procedure for recusal from lawsuits involving major donors, while Canon 3 F sets the rule for remittal of disqualification.

Canon 4 regulates extrajudicial activities, introducing a few tightenings of existing rules.

Canon 5 greatly develops the rules on political activity in the election of judges and creates the Special Committee on Judicial Election Campaign Intervention "to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office." Exhibits B through E to the Court's order contain the following amendments to rules other than the Code of Judicial Conduct: Proposed new M.R.C.P. 16 A and comment on Motions for Recusal of Judges; Proposed new Rule 1.15 of the Rules of Circuit and County Court Practice and Proposed new Rule 1.11 of Rules of Chancery Court Practice on Motions for Recusal of Judges; Proposed new Rule 48B to Mississippi Rules of Appellate Procedure on Proceedings on Motion for Disqualification of Trial Judge, and Proposed revised Rule 6A to the Rules of the Commission on Judicial Performance.

Cross References — Commission on Judicial Performance, see Mississippi Code of 1972 § 9-19-1 et seq.

RESEARCH REFERENCES

Practice References. Geyh, Alfini, Lubet, Shaman,, Judicial Conduct and Ethics, Fifth Edition (Michie).

Shepard's Professional and Judicial Conduct Citations (Shepard's).

PREAMBLE.

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which can result in disciplinary action. When “should” or “should not” is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions. The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY.

“Appropriate authority” denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).

“Candidate.” A candidate is a person seeking selection for judicial office by election or appointment. Persons become candidates for judicial office as soon as they make public announcements of candidacy, declare or file as candidates with the election or appointment authority, or authorize solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Canon 5.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(c) and 3B(9).

"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Sections 3E(1)(c) and 3E(1)(d).

"Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1)(c) and 3E(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Sections 3E(3) and 4E.

"Independent persons, committees or organizations" shall mean an individual person or organization not required to report as affiliated with a campaign for judicial office. See Section 5F.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4F, 4I, 5A(2), 5A(3), 5B(2), 5C, 5D, and 5F.

"Major donor", for the purposes of Section 3E(2), shall be defined as follows:

(a) If the donor is an individual, "donor" means that individual, the individual's spouse, or the individual's or the individual's spouse's child, mother, father, grandmother, grandfather, grandchild, employee and employee's spouse.

(b) If the donor is an entity other than an individual, "donor" means the entity, its employees, officers, directors, shareholders, partners members, and contributors and the spouse of any of them.

(c) A "major donor" is a donor who or which has, in the judge's most recent election campaign, made a contribution to the judge's campaign of (a) more than $2,000 if the judge is a justice of the Supreme Court or judge of the Court of Appeals, or (b) more than $1,000 if the judge is a judge of a court other than the Supreme Court or the Court of Appeals.

(d) The term "contribution to the judge's campaign" shall be the total of all contributions to a judge's campaign and shall be deemed to include all contributions of every kind and type whatsoever, whether in the form of cash, goods, services, or other form of contribution, and whether donated directly to the judge's campaign or donated to any other person or entity for the purpose of supporting the judge's campaign and/or opposing the campaign of the judge's opponent(s). The term "contribution to a judge's campaign" shall also be deemed to include any publication, advertisement or other release of information, or payment therefor, other than a bona fide news item published by existing news media, which contains favorable information about the judge or which contains unfavorable information about the judge's opponent(s).

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the judge maintains a close familial relationship. See Sections 4D, 4E and 4G.

"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3E(1) and 4D.

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Sections 3B(11) and 4D(4).

"Part-time judge" denotes a judge who serves for an extended, fixed term, but is allowed to practice law or any other profession or occupation. The term does not apply to magistrates, court commissioners, special masters or referees.

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1).

"Public election." This term includes primary and general elections; it includes partisan elections and nonpartisan elections. See Section 5C.

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(3), 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

"Special judge" denotes a judge, including a retired judge, other than one who is serving to fill the unexpired term of a regularly elected or appointed judge who has vacated the office, who serves by appointment for a limited period or in a particular matter due to the unwillingness or inability of a sitting judge to hear a case or attend court, or who is appointed on an emergency basis.

"Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Section 3E(1)(d).

Commentary

In defining "members of the candidate's family" and "members of the judge's family" siblings of the candidate and judge are included. The phrase "major donor" is also included. Likewise, no reference is made to retention elections. In these respects, this section differs from the ABA Model Code of Judicial Conduct.

The ABA Model Code defines "continuing part-time judge," "periodic part-time judge," and "pro tempore part-time judge." Also, in the Application Section, the ABA model refers to "retired judge subject to recall." In the adaption of the model for Mississippi application, these are reduced to "part-time judge," and "special judge," which covers non-standard positions subject to special treatment. See Application Section.

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Commentary

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

JUDICIAL DECISIONS

Conflict of interest.
Exceeding scope of authority.
Failing to sign court documents.
Harmless error.
Improper communications.
Miscellaneous misconduct.
Mishandling of funds.
Personal conduct.
Sanctions.

Conflict of interest.

County justice court judge was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 4(A)(1)-(3) as he ordered that his grandson's driver's license be reinstated (after the grandson pled nolo contendere to DUI) and attempted to have a sheriff allow the grandson to serve his time in a local jail instead of a state facility. Miss. Comm'n on Judicial Performance v. Cole, 932 So. 2d 9 (Miss. 2006).

Where a judge allowed intervention in a will contest by a company that he was assisting in locating a barge landing site for a county landfill, at the same time that he was negotiating with the proponent of the will, and ruled in favor of the company, he violated Canons 1, 2 A, 2 B, 3 A(1), 3 A(4), 3 C, 3 D, 5 C(1) and 5 F. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

Where a judge established a relationship with various persons by assisting them in locating a barge landing site for a county landfill and used his position as judge for their benefit by appearing before the county board of supervisors, he violated Canons 1, 2 A, 2 B, 3 A(1) and 5 C(1). Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

The judge's conduct violated Canons 1, 2, and 3 of the Code of Judicial Conduct when he came down from the bench, grabbed defendant around the head, used racial epithets and other inappropriate language, and then denied ever having met the defendant previously, when in fact, he had met him during a prior confrontation relating to the judge's private business. Mississippi Comm'n on Judicial Performance v. Guest, 717 So. 2d 325 (Miss. 1998).

Judge who served part-time—pro tem as a municipal court judge, and also engaged in private criminal defense practice, received sanction of public reprimand for assuming role of attorney, and presumably accepting a fee, for representing a defendant and attempting to reduce the same bond which he, as city judge, had earlier set for that defendant. Mississippi Comm'n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994).

Justice court judge violated this canon by disrupting court proceedings, accusing another judge and wildlife officers of impropriety, and acting on behalf of criminal defendants. In re Cooksey, 515 So. 2d 957 (Miss. 1987).

Justice court judge was fined and publicly reprimanded for using criminal process to collect civil debts, failing to properly docket and process bad checks, failing to properly collect and account for contributions to county law library fund, collecting fees in excess of statutory maximum and paying fees in excess of statutory maximum to court officials, and having a pecuniary interest in the outcome of litigation filed in his court. In re Lambert, 421 So. 2d 1023 (Miss. 1982).

Exceeding scope of authority.

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge misused her authority as a drug court judge by keeping participants in the program longer than the law allowed and by presiding over a family member's case, but there was no evidence she acted with the intent of depriving the public of assets or exploiting her position for personal gain, and she had no disciplinary history. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Judge violated Miss. Code Jud. Conduct Canons 1, 2(A), 3(B)(1), (2), (4), and (8) by denying drug court participants due process. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Ann. § 9-23-15(2) and Miss. Code Jud. Conduct Canons 1, 2(A), and 3(B)(2) by accepting participants from other courts. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Ann. § 99-15-26(2)(a)(v) and Miss. Code Jud. Conduct Canons 1, 2(A), 3(B)(2) and (8), and 3(C)(1) because the judge kept drug court participants in the program over two years. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Jud. Conduct 1, 2(A), 2(B), and 3(C)(1) because the judge tried to get a friend's bond-writing suspension lifted. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge who abused his contempt powers, failed to recuse himself from contempt proceedings, and prevented those he charged with contempt from presenting any defense, violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), (2), and (4), and 3E(1)(A), as well as Miss. Const. art. VI, § 177A; he was fined $2,500 and publicly reprimanded. Miss. Comm'n on Judicial Performance v. Harris, 131 So. 3d 1137 (Miss. 2013).

Public reprimand against a judge was proper because he misused the powers of contempt and violated Miss. Code Jud. Conduct Canons 1, 3(B)(2), and 3(B)(8) when he held a defendant in criminal contempt for failing to recite the pledge of allegiance in open court. He violated Miss. Code Jud. Conduct Canons 2(A) and 3(B)(4) by incarcerating the defendant for expressing his rights under U.S. Const. amend. I. Miss. Comm'n on Judicial Performance v. Littlejohn, 62 So. 3d 968 (Miss. 2011).

Order that the judge be suspended for 30 days from office without pay, along with a public reprimand, a fine, and an assessment of costs was appropriate because he violated Miss. Code Jud. Conduct Canons 1, 2(A), (B), 3(A), (B)(1), (B)(2), and 3(B)(7) and his egregious actions constituted willful misconduct in office and conduct prejudicial to the administration of justice. By involving himself in another judge's cases and attempting to assist defendants with their tickets, the judge compromised the integrity and independence of the judiciary and his actions created an impression that certain defendants were in a special position to influence him. Miss. Comm'n on Judicial Performance v. McKenzie, 63 So. 3d 1219 (Miss. 2011).

Chancellor was publicly reprimanded for misconduct in violation of, inter alia, Miss. Code Jud. Conduct Canon 1, 2A, 3B(2), 3C(1) because the chancellor had issued subpoenas to two members of county board of supervisors, and during a later meeting with the board of supervisors, the chancellor admitted that he had failed to comply with the law in doing so; further, the commission found by clear and convincing evidence that the chancellor had engaged in willful misconduct in office and conduct prejudicial to the administration of justice which brought the office into disrepute, under Miss. Const. art. VI, § 177A. The record did not indicate any aggravating factors. Miss. Comm'n on Judicial Performance v. Buffington, 55 So. 3d 167 (Miss. 2011).

Removal of the judge from office was appropriate because he violated Miss. Code Jud. Conduct Canons 1, 2(A), and 3(E) when he committed a minor child to detention after recusing himself from the case and then entered an order appointing another judge to hear the case without authority. His actions constituted willful misconduct in office and conduct prejudicial to the administration of justice and his assertion that his actions were a mere error of law was without merit. Miss. Comm'n on Judicial Performance v. Osborne, 16 So. 3d 16 (Miss. 2009).

Mississippi Commission on Judicial Performance's finding that a justice court judge violated Miss. Code Ann. §§ 99-23-1, 99-23-5, 99-23-13, and Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3(B)(2), 3(B)(4), 3(B)(7), 3(B)(8), 3(C)(1), and Miss. Const. Art. VI, § 177A, was clearly and convincingly supported by the record because the judge exceeded her authority in repeatedly entering unlawful orders pertaining to peace bonds resulting in the incarceration of an accused. Miss. Comm'n on Judicial Performance v. Boland, 998 So. 2d 380 (Miss. 2008).

Failure to follow the correct procedural safeguards of giving one accused of contempt a specific charge, notice, and a hearing violated Miss. Code Jud. Conduct Canon 1 since disregard of the law brings the integrity and independence of the judiciary into question. Miss. Comm'n on Judicial Performance v. Willard, 788 So. 2d 736 (Miss. 2001).

A judge abused her contempt powers and thereby violated Canons 1, 2, and 3 when she held a newspaper reporter in contempt and put her in jail without following the proper procedures. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

Although a judge's conduct in entering orders regarding a defendant at the same time the senior judge was also entering orders regarding that defendant in some of the same cases did not evidence the level of civility and professionalism expected of judges, the judge's conduct did not constitute a violation of the statute. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

Circuit court judge was not required to pay the fine that was recommended by the Mississippi Commission on Judicial Performance, but was publicly reprimanded and assessed costs for violating the canons of judicial conduct by abusing her contempt powers and illegally expunging the drug convictions of two persons. Mississippi Comm'n on Judicial Performance v. Sanders, 749 So. 2d 1062 (Miss. 1999).

A judge violated Section 177A of the Mississippi Constitution of 1890, as amended and judicial canons 1, 2A, 2B, and 3A(1) of the Mississippi Code of Judicial Conduct when he willfully and improperly reduced DUI charges against several defendants, and he would be publicly reprimanded, fined $1,500, and ordered to pay all costs associated with the case. Mississippi Comm'n on Judicial Performance v. Jones, 735 So. 2d 385 (Miss. 1999).

Where a judge suspended the sentences previously entered in two cases with the full knowledge that she lacked jurisdiction to enter such orders and without considering the Uniform Post Conviction Relief Act, she violated Canons 1, 2A, 3A(1), 3A(4), and 3B(1) of the Code of Judicial Conduct. Mississippi Comm'n on Judicial Performance v. Sanders, 708 So. 2d 866 (Miss. 1998).

Judge was publicly reprimanded, fined $1500, and taxed with costs for his post-sentencing release of four state prisoners in excess of his authority. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Municipal court judge who incarcerated a defendant without notice or hearing, and who sentenced a defendant to more jail time than allowed by law and found same defendant guilty of perjury based upon judge's own affidavit and warrant, was sanctioned by public reprimand and taxation of costs. Mississippi Comm'n on Judicial Performance v. Fletcher, 686 So. 2d 1075 (Miss. 1996).

Where justice court judge found litigant in contempt for what judge perceived as a direct attack on him personally, rather than on the court, judge's action was in direct violation of case law and Code of Judicial Conduct, and constituted willful misconduct in office and conduct prejudicial to administration of justice. Mississippi Judicial Performance Comm'n v. Walker, 565 So. 2d 1117 (Miss. 1990).

Justice court judge was removed from office for using his judgeship for his own pecuniary benefit, where he collected fines or fees and failed to remit them to the court clerk. Mississippi Judicial Performance Comm'n v. Coleman, 553 So. 2d 513 (Miss. 1989).

Justice court judge was publicly reprimanded for mishandling an eviction and past due rent case, which culminated in judge's ordering tenant imprisoned for non-payment of civil debt. In re Bailey, 541 So. 2d 1036 (Miss. 1989).

County court judge was removed from office for charging excessive fines, using county prisoners for personal and county work, and deciding more than 100 misdemeanor cases "off the record," for which there were no case files, docket entries, or other records of filing or disposition in office of circuit clerk. In re Collins, 524 So. 2d 553 (Miss. 1987).

Justice court judge violated this canon by utilizing criminal process or threat of criminal process to collect civil debts, failing to properly docket and process bad check cases, failing to collect civil court costs deposit in advance from merchants, failing to keep records required of his office, and collecting court costs from county in cases which were never docketed. In re Odom, 444 So. 2d 835 (Miss. 1984).

Failing to sign court documents.

Chancellor violated the Code of Judicial Conduct because he signed ex parte orders concerning a ward, and the signature of the attorney for the ward's mother, without additional notarization, was insufficient support for an order touching upon the administration of the conservatorship; by accepting unsworn petitions and failing to conduct further inquiry, the chancellor exhibited negligence with regard to the administration of the ward's estate. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

Justice court judge received private reprimand for first infraction involving collecting fines, failing to sign criminal dockets, and dismissal of tickets, where there was no intent to be detrimental to law enforcement or judicial fairness, and no hint of dishonesty or attempt to gain political favor. Mississippi Judicial Performance Comm'n v. Justice Court Judge, 580 So. 2d 1259 (Miss. 1991).

Sanction of public reprimand and fine of $500 was not too harsh a punishment for judge's improper dismissal of non-moving violations and traffic tickets, assessment of excessive fees and costs, and failure to sign court dockets. Mississippi Judicial Performance Comm'n v. Cowart, 566 So. 2d 1251 (Miss. 1990).

Harmless error.

Change of primary physical custody of the child from the father to the mother was proper because, even though the chancellor's remarks were clearly inappropriate, the error arising therefrom was harmless. The record revealed ample evidence that supported the chancellor's finding on every issue except that of visitation, which the appellate court remanded for further proceedings; thus, the appellate court was unable to find that the chancellor's improper conduct affected a substantial right of the parties. Schmidt v. Bermudez, 5 So. 3d 1100 (Miss. Ct. App. 2008), reversed by, remanded by 5 So. 3d 1064, 2009 Miss. LEXIS 104 (Miss. 2009).

Improper communications.

County justice court judge, who also served as a pastor, had violated Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(7), 3B(8), 3B(11), 3C(1), 3E(1), and 4A, and Miss Const. art. 6, § 177A, where he had contacted an investigator about a prostitution charge against the daughter of a friend and had sua sponte remanded the charge to the file, and had contacted another investigator and inquired about the arrest and pending charges of his parishioner's daughter. In addition to the public remand and $500 fine recommended by the Mississippi Commission on Judicial Performance, the judge was suspended without pay for 30 days. Miss. Comm'n on Judicial Performance v. Sutton, — So. 3d —, 2019 Miss. LEXIS 253 (Miss. July 18, 2019).

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge admittedly gave misleading statements regarding a prior arrest during a newspaper interview while she was serving as a judge, but there was no evidence she acted with the intent of depriving the public of assets or exploiting her position for personal gain, and she had no disciplinary history. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Justice court judge was suspended from office for ninety days without pay and was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3B(2), 3B(4), 4A, and Miss. Const. art. 6, § 177A, where the judge engaged in ex parte communications with a female litigant and inappropriately handled a fine reduction. Allegations that the judge made sexual advances toward the female litigant were not established by clear and convincing evidence. Miss. Comm'n on Judicial Performance v. Boone, 60 So. 3d 172 (Miss. 2011).

Public reprimand imposed against a judge was proper because he had engaged in ex parte communications with parties involved in a disturbance-of-the-peace case and also entered a plea of not guilty for one of the parties. That misconduct violated Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 3(B)(4), and 3(B)(7), and was willful, prejudicial to the administration of justice, and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 10 So. 3d 486 (Miss. 2009).

Judge's actions in engaging in ex parte communications with community members constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute, Miss. Const. Art. 6, § 177A; the judge's actions violated Miss. Code Jud. Canons 1, 2A, 2B, 3B(2), and 3B(7); he was publicly reprimanded and suspended for sixty days. Miss. Comm'n on Judicial Performance v. Carr, 990 So. 2d 763 (Miss. 2008).

Justice court judge was publicly reprimanded and assessed costs as he committed willful misconduct in office and conduct prejudicial to the administration of justice which brought the office into disrepute in violation of Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(4), 3B(7), 3B(8), and 3C(1) by, among other things, engaging in ex parte communications with litigants, which created the perception that his decisions were not made independently and that he would not deal honestly with all litigants in his court. Miss. Comm'n on Judicial Performance v. Sutton, 985 So. 2d 322 (Miss. 2008).

County judge was ordered to be publicly reprimanded and suspended for 30 days because he repeatedly engaged in prohibited ex parte conversations with a litigant and offered advice as to actions that the litigant should take to advance her case. Miss. Comm'n on Judicial Performance v. Fowlkes, 967 So. 2d 12 (Miss. 2007).

Where a justice court judge acted to cause a complaining officer to not show up for trial so that drunk driving charges could be dismissed for failure to prosecute, the Mississippi Supreme Court held, under Miss. Const. Art. 6, § 177A, that the offense involved moral turpitude, and imposed a 30-day suspension upon the judge. Miss. Comm'n on Judicial Performance v. Sanford, 941 So. 2d 209 (Miss. 2006).

Recommendation for a public reprimand was not adopted since it was too lenient for a judge who committed willful misconduct under Miss. Const. Art. 6, § 177A by violating Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(7), 3B(8), and 3C(1) when he engaged in improper ex parte communications; moreover, he ignored Miss. Code Ann. § 9-11-33 and Miss. Unif. R. P. J. Ct. 2.06 when he set aside a final judgment and interfered with orders handed down by another judge. Miss. Comm'n on Judicial Performance v. Britton, 936 So. 2d 898 (Miss. 2006).

A judge violated § 9-11-11 and Canons 1, 2A, 2B, 3A(1), 3A(4), 3A(5), and 3B(1) where he failed to promptly dispose of the court's business and discharge his administrative duties, he allowed his relationship with the court clerk to affect his duties, and he engaged in ex parte communications which required his recusal in 44 cases within a short period of time. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

A judge's conduct of numerous ex parte communications violated Canons 1, 2A, 2B, 3A(1), 3A(2), 3A(3), and 3A(4), and constituted willful misconduct in office prejudicial to the administration of justice. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Judge's communications with detainee, her mother, arresting officer, and prosecuting attorney, and his interference with detainee's bonding process, constituted willful misconduct in office and conduct prejudicial to administration of justice, warranting public reprimand and taxation of costs. Mississippi Comm'n on Judicial Performance v. Vess, 692 So. 2d 80 (Miss. 1997).

Justice court judge was publicly reprimanded, fined $1,450 and assessed costs, for dismissing speeding and traffic tickets, and for holding ex parte communications with defendants. Mississippi Comm'n on Judicial Performance v. Bowen, 662 So. 2d 551 (Miss. 1995).

Where justice court judge directed that judgment in a particular case be held, and later attempted to change the judgment after ex parte communications with a party, his actions were improper and warranted public reprimand and fine of $250. Mississippi Comm'n on Judicial Performance v. Underwood, 644 So. 2d 458 (Miss. 1994).

Justice court judge was removed from office for continuing misconduct involving ticket fixing and adjudicating criminal matters without a hearing or notice to officer. In re Hearn, 542 So. 2d 901 (Miss. 1989).

Miscellaneous misconduct.

Judge violated the Canon because he committed willful misconduct by interfering with an arrest warrant that another judge had issued, and the judge was also a party in that matter; the judge's willful misconduct prejudiced the administration of justice and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Burton, — So. 3d —, 2019 Miss. LEXIS 178 (Miss. Apr. 25, 2019).

Stipulation of the Mississippi Commission on Judicial Performance (Commission) and a judge agreeing to the judge's judicial misconduct and issuing a public reprimand and fine was accepted because (1) the judge admittedly committed misconduct by not issuing final orders in 28 civil cases held in abeyance and issuing an order in a civil case without holding a promised hearing, constituting misconduct in office and conduct prejudicial to the administration of justice bringing the judicial office into disrepute, (2) the misconduct denied citizens prompt decisions they were entitled to and caused them unnecessary expense, (3) the judge was previously disciplined, and, (4) in mitigation, the judge cooperated with the Commission and ultimately entered orders in cases in which the judge retained jurisdiction. Miss. Comm'n on Judicial Performance v. McGee, — So. 3d —, 2019 Miss. LEXIS 137 (Miss. Apr. 4, 2019).

Judge's actions violated various canons, given that he ordered a defendant to serve six months in a work center for a conviction defendant had already appealed, and for which he already had satisfied his sentence, plus the judge was discourteous toward defendant in the face of his attempt to point out the judge's errors; the judge's failure to devote sufficient attention to the record before him did not represent the high standards of conduct required and his actions were anything by competent. Miss. Comm'n on Judicial Performance v. Sheffield, 235 So. 3d 30 (Miss. 2017).

Former county justice court judge had violated Miss. Code Jud. Conduct Canons 1, 2A, and 4(a) where he intentionally interfered in a situation with a mentally handicapped individual at a flea market, used bigotry and aggressiveness, and was dressed like a security officer and carried a gun even though he was not hired to provide security. Miss. Comm'n on Judicial Performance v. Weisenberger, 201 So. 3d 444 (Miss. 2016).

Mississippi Commission on Judicial Performance did not prove by clear and convincing evidence that the chancellor gave testimony he knew or should have known would be misleading because it did not provide any sworn testimony to contradict the chancellor's plausible version of events. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

In a case where a judge stipulated to multiple incidents where she denied citizens their due process rights, the judge was removed from office based on violations of several judicial conduct canons, and the judge's resignation did not foreclose the need to apply appropriate sanctions. The judge admitted that she lacked the proper judicial temperament, her actions were serious, they constituted repeated misconduct, and they were willful; although mitigating circumstances existed because the judge acknowledged her errors, aggravating circumstances also existed. Miss. Comm'n on Judicial Performance v. Darby, 143 So. 3d 564 (Miss. 2014).

Judge was publicly reprimanded, fined, and assessed costs of the proceeding because the judge, among other things, mentioned to counsel in chambers, but did not make a disclosure on the record, that his father might have been tested for asbestosis, failed to disclose the history of his parent's asbestosis claims, and the settlement between the judge's father and one of the parties, and failed to rule on counsel's motion to recuse made after the conflict was discovered. Miss. Comm'n on Judicial Performance v. Bowen, 123 So. 3d 381 (Miss. 2013).

Judge was publicly reprimanded, suspended, and fined because he committed willful misconduct and conduct prejudicial to the administration of justice when he recused himself from cases and reinserted himself and took further action in the cases and abused the contempt power; however, there was no evidence of any premeditation, that the judge's conduct was done to satisfy any personal desires, or that the judge personally gained from his actions. Miss. Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

Judge committed willful misconduct and conduct prejudicial to the administration of justice, bringing the judicial office into disrepute, because the judge recused himself from cases, and then, with full knowledge that he was recused, reinserted himself and took further action in the cases; the judge abused the contempt power by issuing arrest warrants for indirect criminal contempt that led to parents being held without bond for seventy-two hours without notice or a hearing. Miss. Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

As a judge violated Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 3(B)(4), and 3(C)(1), and Miss. Const. art, VI, § 177A by attempting to use his office to advance the private interests of his tenant and himself as landlord, and by being impatient and discourteous and abusing his contempt power when arguing with a probation officer, and he had a pattern of prior misconduct, he was publicly reprimanded and fined. Miss. Comm'n on Judicial Performance v. Fowlkes, 121 So. 3d 904 (Miss. 2013).

Judge was publicly reprimanded and assessed costs because his actions in 1) having ex parte contact with a defendant; 2) not disclosing this to the prosecutor; 3) dismissing the defendant's tickets without a hearing or notice to the prosecutor; and 4) falsifying court records violated Miss. Code Jud. Conduct Canons 1, 2(B), 3(B)(1), 3(B(7), and 3(B(8) and constituted willful misconduct in office that brought the judicial office into disrepute under Miss. Const. art. VI, § 177A. Miss. Comm'n on Judicial Performance v. Carver, 107 So. 3d 964 (Miss. 2013).

Judge was publicly reprimanded and suspended for 30 days for misconduct which brought the judicial office into disrepute pursuant to Miss. Const. art. VI, § 177A in failing to properly adjudicate criminal matters, and engaging in ticket-fixing, in exchange for simultaneous payments to a "drug fund" established and maintained by the town police chief, which violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), 3B(2), 3B(8); the judge admitted that his decision to accept the lesser pleas contingent on payments into the drug fund was at least partially motivated by his desire to collect fees for the town, and this was not a mistake of the law, but a clear disregard of it, and was sanctionable. After considering the Gibson factors, the commission's recommendation was adopted. Miss. Comm'n on Judicial Performance v. Smith, 109 So. 3d 95 (Miss. 2013).

While the judge did delay in issuing a ruling in a case in violation of Miss. Code Jud. Conduct Canon 1, 2A, 3B(8) and 3C(1), the court did not find willfulness under Miss. Const., art. 6, § 177A(b), (c) but did find negligence. The judge testified that he was presented a case of first impression for him and that it wasn't his intention that it be held up, and the summary judgment hearing was held approximately ten days after he had started treatment for a serious medical condition, with those treatments continuing for a period of several months. Miss. Comm'n on Judicial Performance v. Agin, 17 So. 3d 578 (Miss. 2009).

Judge's remarks violated Miss. Code Jud. Conduct Canons 1, 2(A) & (B), 3(B)(5), constituting willful misconduct in the judicial office which brought the judicial office into disrepute, thus causing the judge's conduct to be actionable pursuant to Miss. Const. Art. 6, § 177A; the judge's comments were disparaging results and not matters of legitimate public concern and went beyond the realm of protected campaign speech. Miss. Comm'n on Judicial Performance v. Osborne, — So. 2d —, 2009 Miss. LEXIS 9 (Miss. Feb. 5, 2009), opinion withdrawn by, substituted opinion at 11 So. 3d 107, 2009 Miss. LEXIS 278 (Miss. June 18, 2009).

Mississippi Commission on Judicial Performance had no direct authority or power to order punishment on a justice court judge after a formal complaint was filed, alleging violations of Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(5), 3B(7), and 3B(8); a memorandum of understanding reached between the judge and the Commission was considered by the court but was not binding on the court in assessing the judge's punishment. Miss. Comm'n on Judicial Performance v. Martin, 995 So. 2d 727 (Miss. 2008).

Judge was publicly reprimanded and assessed costs of $ 100 because the judge violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(8), and 3C(1) by failing to timely issue rulings in cases; the judge established a pattern of delays in rendering opinions, giving the appearance that the judge failed diligently to perform judicial duties. Miss. Comm'n on Judicial Performance v. Agin, 987 So. 2d 418 (Miss. 2008).

Facts of the judge's case were that, in her capacity as judge, she made a derogatory, public statement concerning African-American members of her community; while the statement was insulting as opposed to a chargeable, dishonest act, the statement brought the integrity of the judiciary into question. Miss. Comm'n on Judicial Performance v. Boland, 975 So. 2d 882 (Miss. 2008).

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 1. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

Where a judge violated Canons 1, 2B and 3B(2) of the Code of Judicial Conduct by expressing anger at a second judge for refusing to talk with him before signing an arrest warrant, and then instructing a deputy clerk not to issue the warrant, public reprimand was appropriate because such conduct created the appearance that the judge might be partial to certain interests and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Thompson, 972 So. 2d 582 (Miss. 2008).

Where the Mississippi Commission on Judicial Performance, acting on information from a police officer, filed a formal complaint against a municipal court judge, accusing the judge of inappropriately engaging in "fixing" traffic tickets, it was determined that the judge used his position to fix tickets by "passing" them to the file without requiring defendants to appear and over the objections from the issuing officer; clear and convincing evidence showed that the judge's actions violated numerous Miss. Code Jud. Conduct Canons as well as Miss. Const. Art. 6, § 177A; whether the judge's actions were actually willful was of no consequence because the result was the same regardless of whether bad faith or negligence and ignorance were involved and warranted sanctions. Miss. Comm'n on Judicial Performance v. Gordon, 955 So. 2d 300 (Miss. 2007).

Removal from office was an appropriate punishment for a judge who interfered with the prosecution of a domestic violence and assault case against the judge's son because the judge's misuse of the power of his office evidenced his disregard for the administration of justice. By attempting to use his position to obtain favorable treatment for his son and obstruct the prosecution, the judge discredited the dignity and integrity of his office and the judiciary in violation of Miss. Code Jud. Conduct Canon 1. Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247 (Miss. 2005).

State supreme court granted a joint motion for the approval of the recommendation of sanctions against a judge who violated Miss. Code Jud. Conduct Canon 3(E) by participating in proceedings where there was an admitted conflict of interest, and committed willful misconduct that brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Cowart, 936 So. 2d 343 (Miss. 2006).

In handling several matters set before his court, a judge was found to be in violation of the Miss. Code of Jud. Conduct as well as the Mississippi Constitution where the judge ackowledged that his actions, in refusing to allow a defendant to present evidence, in presiding over a probation revocation matter in which there were recusal issues, in trying a defendant in absentia, and in revoking bail and issuing an arrest warrant, violated the Code of Judicial Conduct; public reprimand, suspension from office, and assessment of a fine and costs were warranted. Miss. Comm'n on Judicial Performance v. Roberts, 952 So. 2d 934 (Miss. 2007).

Petitions for writ of mandamus for the recusal of a circuit judge in seven pending civil cases in which an attorney appeared were granted, pursuant to Miss. Code Judge. Conduct Canon 3(E)(1), as the impartiality of the judge towards the attorney was questioned and a reasonable person aware of all the circumstances would question whether the attorney's clients could get a fair hearing in the judge's court; however, the petitions were denied to the extent that they requested the judge's recusal in future cases in which the attorney appeared, as it was not the Supreme Court of Mississippi's practice to grant prospective recusal. In re Blake, 912 So. 2d 907 (Miss. 2005).

Judge's suspension of the fines and State assessments were in response to the county's lack of funding for a court bailiff, and said conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute. However, the record did not show any other incidents that demonstrated that his behavior evidenced a pattern of conduct, there was no moral turpitude involved, and mitigating circumstances were also present in light of the fact that the judge acknowledged the inappropriateness of his conduct and was in agreement with the findings of the Mississippi Commission of Judicial Performance; thus, a public reprimand, a fine, and payment of the costs of the proceedings was a proper sanction. Miss. Comm'n on Judicial Performance v. Sheffield, 883 So. 2d 546 (Miss. 2004).

While acting in an official capacity, judge violated Miss. Const. Art. VI, § 177A, Miss. Code Ann. § 9-11-33, and Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3A, 3B(2), 3B(7), 3(B)(8), 3C(1), 3C(2), 4A, and 4D(1), in conducting ex parte communications with parties, rendering decisions without giving notice of hearings to parties, and habitually taking civil cases under advisement and failing to render timely decisions; a public reprimand, suspension for 30 days without pay, and payment of the costs of the proceeding was held to be appropriate discipline. Miss. Comm'n on Judicial Performance v. McPhail, 874 So. 2d 441 (Miss. 2004).

Judge's actions involving the issuance of an ex parte temporary order changing child custody without notice to the nonmovant, without providing a copy of the order to the nonmovant, and later refusing to allow the nonmovant to be heard, constituted willful misconduct in violation of Miss. Const. Art. 6, § 177A and Miss. Code Jud. Conduct Canons 1, 2A, 3A(1) and (4), and 3B(1). Miss. Comm'n on Judicial Performance v. Perdue, 853 So. 2d 85 (Miss. 2003).

Although there was no proof that a judge willfully intended to misuse a sentencing statute, where she did misuse it and subsequently did nothing to correct her error, and also made a false statement under oath regarding the sentencing, she violated canons 1, 2, and 3. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

The record supported the conclusion that a judge's offensive comments to members of the court staff constituted gross personal conduct in violation of Canons 1, 2A, 2B, 3A(1), 3A(3) and 3B(1). Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Judge's irregularities and improprieties, both on and off the bench, amounted to willful misconduct in office; sanctions of public reprimand, $1,500 fine, and thirty day suspension without pay were appropriate in light of judge's prior discipline for similar conduct. Mississippi Comm'n on Judicial Performance v. Franklin, 704 So. 2d 89 (Miss. 1997).

Justice court judge was publicly reprimanded, fined $2,628.00, and assessed costs, for numerous violations and irregularities in the disposition of various cases. Mississippi Comm'n on Judicial Performance v. Emmanuel, 688 So. 2d 222 (Miss. 1996).

Justice court judge was removed from office for misconduct in the performance of his judicial duties, in view of the number of offenses committed as well as his denial of any wrongdoing. Mississippi Judicial Performance Comm'n v. Hopkins, 590 So. 2d 857 (Miss. 1991).

It was immaterial that justice court judge may not have known the law, that he was negligent, or that he did not understand the law; removal from office was warranted, where judge failed to file 28 of his DUI adjudications and 552 other routine traffic offenses with the Department of Public Safety. In re Quick, 553 So. 2d 522 (Miss. 1989).

Justice court judge was publicly censured, fined $500, and suspended without pay for thirty days, for ordering or allowing an improper alteration of official court records, and for refusing to allow a debtor-defendant to redeem property replevined in his court and then purchasing the property himself at a price which appeared to be below market value. In re Mullen, 530 So. 2d 175 (Miss. 1988).

Justice court judge was publicly reprimanded and fined $250, for improper conduct in handling of speeding tickets, D.U.I. charges, and criminal bad check cases, and for interference with orderly assignment of cases by the justice court clerk. In re Hearn, 515 So. 2d 1225 (Miss. 1987).

Mishandling of funds.

Former judge's failure to pay office-related charges to vendors after being reimbursed for such charges by the State was willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute, and he was publicly reprimanded. Miss. Comm'n on Judicial Performance v. Teel, 863 So. 2d 973 (Miss. 2004).

Justice court judge was removed from the bench and assessed costs, on charges of judicial misconduct including: entering orders without authority, accepting money without authority, acting outside his legal authority to sign an execution of judgment, improper handling of DUI charges, and interference with rotation of cases. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180 (Miss. 1996).

Judge was removed from office for his misappropriation and mishandling of money collected by virtue of his office as justice court judge. In re Stewart, 490 So. 2d 882 (Miss. 1986).

Justice court judge was fined $1,400, publicly reprimanded, and removed from office for misappropriation of funds over a period of seven years. In re Brown, 458 So. 2d 681 (Miss. 1984).

Justice court judge was removed from office for mishandling and unlawfully converting public money to his own use. In re Anderson, 412 So. 2d 743 (Miss. 1982).

Personal conduct.

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge failed to conduct herself in a courteous manner before litigants in her court, but there was no evidence she acted with the intent of depriving the public of assets or exploiting her position for personal gain, and she had no disciplinary history. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Chancery court judge was removed from office and assessed costs where he acknowledged that he had pled guilty to attempting to corruptly influence a witness subpoenaed to appear before a federal grand jury proceeding and attempting to impede the provision of documents by the witness to the federal grand jury with the intent to influence the outcome of the proceeding, thereby violating Miss. Code Jud. Conduct Canon 1 and Miss. Const. art. 6, § 177A. Miss. Comm'n on Judicial Performance v. Walker, 172 So. 3d 1165 (Miss. 2015).

Order that the judge be suspended from office for a period of one year was appropriate because his disparaging racial remarks were not protected speech under either the federal or state constitution. The judge's remarks violated Miss. Code Jud. Conduct Canons 1, 2(A) and (B), and 3(B)(5), thus causing the judge's conduct to be actionable under Miss. Const. Art. VI, § 177A. Miss. Comm'n on Judicial Performance v. Osborne, 11 So. 3d 107 (Miss. 2009).

Judge was publicly reprimanded, assessed costs of proceedings, and fined after he and a woman wrote over $ 330,000 in bad checks for a house and motor vehicles, because any economic injury suffered by the businesses visited by the judge and the woman had been repaid. Although writing checks for insufficient funds was reprehensible conduct for a judge, usually it had to be in conjunction with some other inappropriate act or acts before warranting removal. Miss. Comm'n on Judicial Performance v. Hartzog, 904 So. 2d 981 (Miss. 2004).

Where a county judge had filed new actions within six months of his appointment after misinterpreting the law in Miss. Code Ann. §§ 9-1-25, 9-9-9, the appellate court held that the judge had not willfully abused the privilege of filing new complaints while in office, and the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004).

Where a county judge had filed new actions within six months of his appointment after misinterpreting the law in Miss. Code Ann. §§ 9-1-25, 9-9-9, the appellate court held that the judge had not willfully abused the privilege of filing new complaints while in office, and the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004).

A judge violated Canons 1 and 2A where he was arrested for and pleaded guilty to first offenses driving under the influence. Mississippi Comm'n on Judicial Performance v. Thomas, 722 So. 2d 629 (Miss. 1998).

Municipal judge who used firearm to detain three individuals on his neighbor's property, and who shot out a tire on their vehicle in the process, received sanctions of public reprimand, fine of $2,500, and assessment of costs. Mississippi Comm'n on Judicial Performance v. Whitten, 687 So. 2d 744 (Miss. 1997).

Justice court judge's relationship with defendant who appeared before her, and her subsequent marriage to that individual, damaged reputation and integrity of her judicial office and justified her removal from office. Mississippi Comm'n on Judicial Performance v. Milling, 651 So. 2d 531 (Miss. 1995).

Sanctions.

Recommended sanction of a public reprimand and a $ 500 fine by the Mississippi Commission on Judicial Performance was supported because a judge's misconduct resulted in a warrant not being issued, and the judge meddled in a case involving his own interests and gave an order he should not have given, but it was his first disciplinary matter; because the judge acted in an official capacity in a case in which he was a party and had a conflicting interest, he acted improperly. Miss. Comm'n on Judicial Performance v. Burton, — So. 3d —, 2019 Miss. LEXIS 178 (Miss. Apr. 25, 2019).

Judge committed misconduct in ordering a defendant to serve six months in a work center for a conviction defendant had already appealed, and for which he had already satisfied his sentence; the court issued a 120-day suspension without pay, a public reprimand, and a fine, plus the assessment of costs, as the judge had been both privately admonished and publicly reprimanded for past misconduct, his conduct in this case was clearly negligent, and his failure to take personal responsibility for his error constituted an aggravating factor. Miss. Comm'n on Judicial Performance v. Sheffield, 235 So. 3d 30 (Miss. 2017).

Judge was publicly reprimanded, suspended for 30 days without pay, fined $1,100, and assessed costs of $200 because he threatened use of a weapon on a defendant, interrogated that the defendant concerning his use of drugs, which had no bearing on the charge before the court, and interrogated, demeaned, and intimidated the defendant's mother about the defendant's drug use and her parenting skills, had a history with the Commission on Judicial Performance, and engaged in willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 227 So. 3d 952 (Miss. 2017).

Judge was publicly reprimanded, fined $3,000, and taxed with the costs of the proceedings because he gave a landlord legal advice, granted unrequested relief, entered an unsupported judgment, disregarded applicable rules of law, irreparably harmed the tenant, failed to acknowledge any wrongdoing, and attempted to lay blame on others for his conduct. Miss. Comm'n on Judicial Performance v. Judge, 227 So. 3d 938 (Miss. 2017).

Chancellor was publicly reprimanded, suspended for thirty days without pay, fined, and ordered to pay costs for violating the Code of Judicial Conduct because it was it inappropriate to extend his suspension beyond thirty days; in the past, the supreme court instituted thirty-day suspensions without pay for judges who had deprived citizens of their liberty and who had attempted to subvert and obstruct criminal proceedings, and the chancellor had not been investigated or disciplined before. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

RESEARCH REFERENCES

ALR. Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If Case Cannot Be Heard Otherwise. 27 A.L.R.6th 403.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all activities.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether, based on the conduct, the judge's impartiality might be questioned by a reasonable person knowing all the circumstances.

See also Commentary under Section 2C.

B. Judges shall not allow their family, social, or other relationships to influence the judges' judicial conduct or judgment. Judges shall not lend the prestige of their offices to advance the private interests of the judges or others; nor shall judges convey or permit others to convey the impression that they are in a special position to influence the judges. Judges shall not testify voluntarily as character witnesses.

Commentary

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it *would be improper for judges to allude to their judgeships to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.*

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

Commentary

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from *membership on the basis of race, religion, gender or national origin persons who would otherwise be admitted to membership. See New York State Club Ass'n. v. City of New York, U.S. , 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).*

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, gender, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, gender, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2C or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

JUDICIAL DECISIONS

Appearance of impropriety.
Conflict of interest.
Exceeding scope of authority.
Failure to sign documents.
Improper communications.
Miscellaneous misconduct.
Mishandling of funds.
Negligence.
Personal conduct.
Sanctions.

Appearance of impropriety.

Judge violated Miss. Code Jud. Conduct 2(A), and 3(B)(2) and (4) because the judge denied a defendant the defendant's choice of counsel. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge's statement concerning the African Americans within her community might be questioned by a reasonable person knowing all the circumstances, and thus, it met the test for impropriety. Miss. Comm'n on Judicial Performance v. Boland, 975 So. 2d 882 (Miss. 2008).

Where a judge violated Canons 1, 2B and 3B(2) of the Code of Judicial Conduct by expressing anger at a second judge for refusing to talk with him before signing an arrest warrant, and then instructing a deputy clerk not to issue the warrant, public reprimand was appropriate because such conduct created the appearance that the judge might be partial to certain interests and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Thompson, 972 So. 2d 582 (Miss. 2008).

County justice court judge was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 4(A)(1)-(3) as he ordered that his grandson's driver's license be reinstated (after the grandson pled nolo contendere to DUI) and attempted to have a sheriff allow the grandson to serve his time in a local jail instead of a state facility. Miss. Comm'n on Judicial Performance v. Cole, 932 So. 2d 9 (Miss. 2006).

Removal from office was an appropriate punishment for a judge who interfered with the prosecution of a domestic violence and assault case against the judge's son because the judge's conduct not only created the appearance of an impropriety but also constituted an actual impropriety in violation of Miss. Code Jud. Conduct Canon 2. By threatening the complainant, his son's ex-wife, the judge attempted to "muzzle" the authority of the Commission on Judicial Performance which, in turn, served to diminish public confidence that the judiciary was honest and impartial; and by using his office to improperly influence other officers of the judicial system, the judge both created the appearance of impropriety and committed an actual impropriety, which would tend to erode public confidence in the impartiality of the judiciary. Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247 (Miss. 2005).

In the context of recusal of a judge, and the presumption that a judge is qualified and unbiased, the stringent "beyond a reasonable doubt" burden is incompatible with the standard of a hypothetical "reasonable person knowing all the circumstances." The proper standard is that recusal is required when the evidence produces a "reasonable doubt" as to the judge's impartiality. Dodson v. Singing River Hosp. Sys., 839 So. 2d 530 (Miss. 2003).

In patient's suit against hospital, where a large firm represented the hospital, one of the firm's partners had served as treasurer in the judge's election campaign, and other lawyers from the firm had represented the judge and his wife for four years in a defective residential construction case, without charge. Under a totality of the circumstances analysis, a reasonable person could have had reasonable doubts as to the judge's impartiality, and the patient was entitled to a new trial before another trial judge. Dodson v. Singing River Hosp. Sys., 839 So. 2d 530 (Miss. 2003).

Standing alone, special chancellor's failure to recuse himself in light of his contact with husband in divorce proceeding was not reversible error. Robinson v. Irwin, 546 So. 2d 683 (Miss. 1989).

Conflict of interest.

Where a judge established a relationship with various persons by assisting them in locating a barge landing site for a county landfill and used his position as judge for their benefit by appearing before the county board of supervisors, he violated Canons 1, 2 A, 2 B, 3 A(1) and 5 C(1). Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

Where a judge allowed intervention in a will contest by a company that he was assisting in locating a barge landing site for a county landfill, at the same time that he was negotiating with the proponent of the will, and ruled in favor of the company, he violated Canons 1, 2 A, 2 B, 3 A(1), 3 A(4), 3 C, 3 D, 5 C(1) and 5 F. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

The judge's conduct violated Canons 1, 2, and 3 of the Code of Judicial Conduct when he came down from the bench, grabbed defendant around the head, used racial epithets and other inappropriate language, and then denied ever having met the defendant previously, when in fact, he had met him during a prior confrontation relating to the judge's private business. Mississippi Comm'n on Judicial Performance v. Guest, 717 So. 2d 325 (Miss. 1998).

Judge who served part-time—pro tem as a municipal court judge, and also engaged in private criminal defense practice, received sanction of public reprimand for assuming role of attorney, and presumably accepting a fee, for representing a defendant and attempting to reduce the same bond which he, as city judge, had earlier set for that defendant. Mississippi Comm'n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994).

Judge did not violate this canon by refusing to recuse himself from sitting at defendant's trial on charges of embezzlement; although judge had known defendant for approximately nine years, there was no indication of any bias or prejudice for or against him. Medley v. State, 600 So. 2d 957 (Miss. 1992).

Justice court judge violated this canon by disrupting court proceedings, accusing another judge and wildlife officers of impropriety, and acting on behalf of criminal defendants. In re Cooksey, 515 So. 2d 957 (Miss. 1987).

Exceeding scope of authority.

Judge violated Miss. Code Jud. Conduct 1, 2(A), 2(B), and 3(C)(1) because the judge tried to get a friend's bond-writing suspension lifted. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Jud. Conduct Canons 1, 2(A), 3(B)(1), (2), (4), and (8) by denying drug court participants due process. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Ann. § 9-23-15(2) and Miss. Code Jud. Conduct Canons 1, 2(A), and 3(B)(2) by accepting participants from other courts. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Ann. § 99-15-26(2)(a)(v) and Miss. Code Jud. Conduct Canons 1, 2(A), 3(B)(2) and (8), and 3(C)(1) because the judge kept drug court participants in the program over two years. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge who abused his contempt powers, failed to recuse himself from contempt proceedings, and prevented those he charged with contempt from presenting any defense, violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), (2), and (4), and 3E(1)(A), as well as Miss. Const. art. VI, § 177A; he was fined $2,500 and publicly reprimanded. Miss. Comm'n on Judicial Performance v. Harris, 131 So. 3d 1137 (Miss. 2013).

Public reprimand against a judge was proper because he misused the powers of contempt and violated Miss. Code Jud. Conduct Canons 1, 3(B)(2), and 3(B)(8) when he held a defendant in criminal contempt for failing to recite the pledge of allegiance in open court. He violated Miss. Code Jud. Conduct Canons 2(A) and 3(B)(4) by incarcerating the defendant for expressing his rights under U.S. Const. amend. I. Miss. Comm'n on Judicial Performance v. Littlejohn, 62 So. 3d 968 (Miss. 2011).

Order that the judge be suspended for 30 days from office without pay, along with a public reprimand, a fine, and an assessment of costs was appropriate because he violated Miss. Code Jud. Conduct Canons 1, 2(A), (B), 3(A), (B)(1), (B)(2), and 3(B)(7) and his egregious actions constituted willful misconduct in office and conduct prejudicial to the administration of justice. By involving himself in another judge's cases and attempting to assist defendants with their tickets, the judge compromised the integrity and independence of the judiciary and his actions created an impression that certain defendants were in a special position to influence him. Miss. Comm'n on Judicial Performance v. McKenzie, 63 So. 3d 1219 (Miss. 2011).

Chancellor was publicly reprimanded for misconduct in violation of, inter alia, Miss. Code Jud. Conduct Canon 1, 2A, 3B(2), 3C(1) because the chancellor had issued subpoenas to two members of county board of supervisors, and during a later meeting with the board of supervisors, the chancellor admitted that he had failed to comply with the law in doing so; further, the commission found by clear and convincing evidence that the chancellor had engaged in willful misconduct in office and conduct prejudicial to the administration of justice which brought the office into disrepute, under Miss. Const. art. VI, § 177A. The record did not indicate any aggravating factors. Miss. Comm'n on Judicial Performance v. Buffington, 55 So. 3d 167 (Miss. 2011).

Removal of the judge from office was appropriate because he violated Miss. Code Jud. Conduct Canons 1, 2(A), and

3(E) when he committed a minor child to detention after recusing himself from the case and then entered an order appointing another judge to hear the case without authority. His actions constituted willful misconduct in office and conduct prejudicial to the administration of justice and his assertion that his actions were a mere error of law was without merit. Miss. Comm'n on Judicial Performance v. Osborne, 16 So. 3d 16 (Miss. 2009).

Mississippi Commission on Judicial Performance's finding that a justice court judge violated Miss. Code Ann. §§ 99-23-1, 99-23-5, 99-23-13, and Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3(B)(2), 3(B)(4), 3(B)(7), 3(B)(8), 3(C)(1), and Miss. Const. Art. VI, § 177A, was clearly and convincingly supported by the record because the judge exceeded her authority in repeatedly entering unlawful orders pertaining to peace bonds resulting in the incarceration of an accused. Miss. Comm'n on Judicial Performance v. Boland, 998 So. 2d 380 (Miss. 2008).

A judge's failure to follow the correct procedural safeguards of giving one accused of contempt a specific charge, notice, and a hearing eroded the public's confidence in the judge's ability to sit as a justice court judge and thus violated Miss. Code Jud. Conduct Canon 2A. Miss. Comm'n on Judicial Performance v. Willard, 788 So. 2d 736 (Miss. 2001).

Although a judge's conduct in entering orders regarding a defendant at the same time the senior judge was also entering orders regarding that defendant in some of the same cases did not evidence the level of civility and professionalism expected of judges, the judge's conduct did not constitute a violation of the statute. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

A judge abused her contempt powers and thereby violated Canons 1, 2, and 3 when she held a newspaper reporter in contempt and put her in jail without following the proper procedures. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

Circuit court judge was not required to pay the fine that was recommended by the Mississippi Commission on Judicial Performance, but was publicly reprimanded and assessed costs for violating the canons of judicial conduct by abusing her contempt powers and illegally expunging the drug convictions of two persons. Mississippi Comm'n on Judicial Performance v. Sanders, 749 So. 2d 1062 (Miss. 1999).

A judge violated Section 177A of the Mississippi Constitution of 1890, as amended and judicial canons 1, 2A, 2B, and 3A(1) of the Mississippi Code of Judicial Conduct when he willfully and improperly reduced DUI charges against several defendants, and he would be publicly reprimanded, fined $1,500, and ordered to pay all costs associated with the case. Mississippi Comm'n on Judicial Performance v. Jones, 735 So. 2d 385 (Miss. 1999).

Where a judge suspended the sentences previously entered in two cases with the full knowledge that she lacked jurisdiction to enter such orders and without considering the Uniform Post Conviction Relief Act, she violated Canons 1, 2A, 3A(1), 3A(4), and 3B(1) of the Code of Judicial Conduct. Mississippi Comm'n on Judicial Performance v. Sanders, 708 So. 2d 866 (Miss. 1998).

Judge was publicly reprimanded, fined $1500, and taxed with costs for his post-sentencing release of four state prisoners in excess of his authority. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Municipal court judge who incarcerated a defendant without notice or hearing, and who sentenced a defendant to more jail time than allowed by law and found same defendant guilty of perjury based upon judge's own affidavit and warrant, was sanctioned by public reprimand and taxation of costs. Mississippi Comm'n on Judicial Performance v. Fletcher, 686 So. 2d 1075 (Miss. 1996).

Justice court judge abused his authority by failing to comply with acknowledgment that he executed, and by entering orders in cases which were not pending before his court, justifying public reprimand and assessment of costs. Mississippi Comm'n on Judicial Performance v. Hartzog, 646 So. 2d 1319 (Miss. 1994).

Where justice court judge found litigant in contempt for what judge perceived as a direct attack on him personally, rather than on the court, judge's action was in direct violation of case law and Code of Judicial Conduct, and constituted willful misconduct in office and conduct prejudicial to administration of justice. Mississippi Judicial Performance Comm'n v. Walker, 565 So. 2d 1117 (Miss. 1990).

Justice court judge was removed from office for continuing misconduct involving ticket fixing and adjudicating criminal matters without a hearing or notice to officer. In re Hearn, 542 So. 2d 901 (Miss. 1989).

Justice court judge was publicly reprimanded for mishandling an eviction and past due rent case, which culminated in judge's ordering tenant imprisoned for non-payment of civil debt. In re Bailey, 541 So. 2d 1036 (Miss. 1989).

Justice court judge was publicly censured, fined $500, and suspended without pay for thirty days, for ordering or allowing an improper alteration of official court records, and for refusing to allow a debtor-defendant to redeem property replevined in his court and then purchasing the property himself at a price which appeared to be below market value. In re Mullen, 530 So. 2d 175 (Miss. 1988).

County court judge was removed from office for charging excessive fines, using county prisoners for personal and county work, and deciding more than 100 misdemeanor cases "off the record," for which there were no case files, docket entries, or other records of filing or disposition in office of circuit clerk. In re Collins, 524 So. 2d 553 (Miss. 1987).

Justice court judge was publicly reprimanded and fined $250, for improper conduct in handling of speeding tickets, D.U.I. charges, and criminal bad check cases, and for interference with orderly assignment of cases by the justice court clerk. In re Hearn, 515 So. 2d 1225 (Miss. 1987).

Failure to sign documents.

Chancellor violated the Code of Judicial Conduct because he signed ex parte orders concerning a ward, and the signature of the attorney for the ward's mother, without additional notarization, was insufficient support for an order touching upon the administration of the conservatorship; by accepting unsworn petitions and failing to conduct further inquiry, the chancellor exhibited negligence with regard to the administration of the ward's estate. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

Justice court judge received private reprimand for first infraction involving collecting fines, failing to sign criminal dockets, and dismissal of tickets, where there was no intent to be detrimental to law enforcement or judicial fairness, and no hint of dishonesty or attempt to gain political favor. Mississippi Judicial Performance Comm'n v. Justice Court Judge, 580 So. 2d 1259 (Miss. 1991).

Sanction of public reprimand and fine of $500 was not too harsh a punishment for judge's improper dismissal of non-moving violations and traffic tickets, assessment of excessive fees and costs, and failure to sign court dockets. Mississippi Judicial Performance Comm'n v. Cowart, 566 So. 2d 1251 (Miss. 1990).

Improper communications.

County justice court judge, who also served as a pastor, had violated Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(7), 3B(8), 3B(11), 3C(1), 3E(1), and 4A, and Miss Const. art. 6, § 177A, where he had contacted an investigator about a prostitution charge against the daughter of a friend and had sua sponte remanded the charge to the file, and had contacted another investigator and inquired about the arrest and pending charges of his parishioner's daughter. In addition to the public remand and $500 fine recommended by the Mississippi Commission on Judicial Performance, the judge was suspended without pay for 30 days. Miss. Comm'n on Judicial Performance v. Sutton, — So. 3d —, 2019 Miss. LEXIS 253 (Miss. July 18, 2019).

Justice court judge was suspended from office for ninety days without pay and was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3B(2), 3B(4), 4A, and Miss. Const. art. 6, § 177A, where the judge engaged in ex parte communications with a female litigant and inappropriately handled a fine reduction. Allegations that the judge made sexual advances toward the female litigant were not established by clear and convincing evidence. Miss. Comm'n on Judicial Performance v. Boone, 60 So. 3d 172 (Miss. 2011).

Public reprimand imposed against a judge was proper because he had engaged in ex parte communications with parties involved in a disturbance-of-the-peace case and also entered a plea of not guilty for one of the parties. That misconduct violated Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 3(B)(4), and 3(B)(7), and was willful, prejudicial to the administration of justice, and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 10 So. 3d 486 (Miss. 2009).

Judge's actions in engaging in ex parte communications with community members constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute, Miss. Const. Art. 6, § 177A; the judge's actions violated Miss. Code Jud. Canons 1, 2A, 2B, 3B(2), and 3B(7); he was publicly reprimanded and suspended for sixty days. Miss. Comm'n on Judicial Performance v. Carr, 990 So. 2d 763 (Miss. 2008).

Justice court judge was publicly reprimanded and assessed costs as he committed willful misconduct in office and conduct prejudicial to the administration of justice which brought the office into disrepute in violation of Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(4), 3B(7), 3B(8), and 3C(1) by, among other things, issuing orders based on information obtained from ex parte communications with tenants in a landlord-tenant case. This conduct indicated partiality towards the tenants and did not promote public confidence in the judge's integrity and impartiality. Miss. Comm'n on Judicial Performance v. Sutton, 985 So. 2d 322 (Miss. 2008).

County judge was ordered to be publicly reprimanded and suspended for 30 days because he repeatedly engaged in prohibited ex parte conversations with a litigant and offered advice as to actions that the litigant should take to advance her case. Miss. Comm'n on Judicial Performance v. Fowlkes, 967 So. 2d 12 (Miss. 2007).

Where a justice court judge acted to cause a complaining officer to not show up for trial so that drunk driving charges could be dismissed for failure to prosecute, the Mississippi Supreme Court held, under Miss. Const. Art. 6, § 177A, that the offense involved moral turpitude, and imposed a 30-day suspension upon the judge. Miss. Comm'n on Judicial Performance v. Sanford, 941 So. 2d 209 (Miss. 2006).

Recommendation for a public reprimand was not adopted since it was too lenient for a judge who committed willful misconduct under Miss. Const. Art. 6, § 177A by violating Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(7), 3B(8), and 3C(1) when he engaged in improper ex parte communications; moreover, he ignored Miss. Code Ann. § 9-11-33 and Miss. Unif. R. P. J. Ct. 2.06 when he set aside a final judgment and interfered with orders handed down by another judge. Miss. Comm'n on Judicial Performance v. Britton, 936 So. 2d 898 (Miss. 2006).

While acting in an official capacity, judge violated Miss. Const. Art. VI, § 177A, Miss. Code Ann. § 9-11-33, and Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(A), 3(B)(2), 3(B)(7), 3(B)(8), 3(C)(1), 3(C)(2), 4(A), and 4(D)(1), by conducting ex parte communications with parties, rendering decisions without giving notice of hearings to parties, and habitually taking civil cases under advisement and failing to render timely decisions; a public reprimand, suspension for 30 days without pay, and payment of the costs of the proceeding was held to be appropriate discipline. Miss. Comm'n on Judicial Performance v. McPhail, 874 So. 2d 441 (Miss. 2004).

A judge violated § 9-11-11 and Canons 1, 2A, 2B, 3A(1), 3A(4), 3A(5), and 3B(1) where he failed to promptly dispose of the court's business and discharge his administrative duties, he allowed his relationship with the court clerk to affect his duties, and he engaged in ex parte communications which required his recusal in 44 cases within a short period of time. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

A judge's conduct of numerous ex parte communications violated Canons 1, 2A, 2B, 3A(1), 3A(2), 3A(3), and 3A(4), and constituted willful misconduct in office prejudicial to the administration of justice. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Judge's communications with detainee, her mother, arresting officer, and prosecuting attorney, and his interference with detainee's bonding process, constituted willful misconduct in office and conduct prejudicial to administration of justice, warranting public reprimand and taxation of costs. Mississippi Comm'n on Judicial Performance v. Vess, 692 So. 2d 80 (Miss. 1997).

Justice court judge was publicly reprimanded, fined $1,450 and assessed costs, for dismissing speeding and traffic tickets, and for holding ex parte communications with defendants. Mississippi Comm'n on Judicial Performance v. Bowen, 662 So. 2d 551 (Miss. 1995).

Where justice court judge directed that judgment in a particular case be held, and later attempted to change the judgment after ex parte communications with a party, his actions were improper and warranted public reprimand and fine of $250. Mississippi Comm'n on Judicial Performance v. Underwood, 644 So. 2d 458 (Miss. 1994).

Justice court judge was removed from office for ticket fixing, ex parte communications, and abuse of his contempt powers. Mississippi Comm'n on Judicial Performance v. Chinn, 611 So. 2d 849 (Miss. 1992).

Miscellaneous misconduct.

Judge violated the Canon because he committed willful misconduct by interfering with an arrest warrant that another judge had issued, and the judge was also a party in that matter; the judge's willful misconduct prejudiced the administration of justice and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Burton, — So. 3d —, 2019 Miss. LEXIS 178 (Miss. Apr. 25, 2019).

Stipulation of the Mississippi Commission on Judicial Performance (Commission) and a judge agreeing to the judge's judicial misconduct and issuing a public reprimand and fine was accepted because (1) the judge admittedly committed misconduct by not issuing final orders in 28 civil cases held in abeyance and issuing an order in a civil case without holding a promised hearing, constituting misconduct in office and conduct prejudicial to the administration of justice bringing the judicial office into disrepute, (2) the misconduct denied citizens prompt decisions they were entitled to and caused them unnecessary expense, (3) the judge was previously disciplined, and, (4) in mitigation, the judge cooperated with the Commission and ultimately entered orders in cases in which the judge retained jurisdiction. Miss. Comm'n on Judicial Performance v. McGee, — So. 3d —, 2019 Miss. LEXIS 137 (Miss. Apr. 4, 2019).

Supreme court accepted and affirmed the recommendation of the Mississippi Commission on Judicial Performance for a public reprimand of the judge because she was involved in her relatives' cases; she failed to adjudicate the domestic abuse cases properly by dismissing the matters without a hearing or order; she erred in ordering the refund of an expungement fee; she sought the removal of the complainant from her job; she violated the statute dealing with justice court fees; and her conduct was prejudicial to the administration of justice. Miss. Comm'n on Judicial Performance v. Curry, 249 So. 3d 369 (Miss. 2018).

Judge's actions violated various canons, given that he ordered a defendant to serve six months in a work center for a conviction defendant had already appealed, and for which he already had satisfied his sentence, plus the judge was discourteous toward defendant in the face of his attempt to point out the judge's errors; the judge's failure to devote sufficient attention to the record before him did not represent the high standards of conduct required and his actions were anything by competent. Miss. Comm'n on Judicial Performance v. Sheffield, 235 So. 3d 30 (Miss. 2017).

Former county justice court judge had violated Miss. Code Jud. Conduct Canons 1, 2A, and 4(a) where he intentionally interfered in a situation with a mentally handicapped individual at a flea market, used bigotry and aggressiveness, and was dressed like a security officer and carried a gun even though he was not hired to provide security. Miss. Comm'n on Judicial Performance v. Weisenberger, 201 So. 3d 444 (Miss. 2016).

Mississippi Commission on Judicial Performance did not prove by clear and convincing evidence that the chancellor gave testimony he knew or should have known would be misleading because it did not provide any sworn testimony to contradict the chancellor's plausible version of events. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

In a case where a judge stipulated to multiple incidents where she denied citizens their due process rights, the judge was removed from office based on violations of several judicial conduct canons, and the judge's resignation did not foreclose the need to apply appropriate sanctions. The judge admitted that she lacked the proper judicial temperament, her actions were serious, they constituted repeated misconduct, and they were willful; although mitigating circumstances existed because the judge acknowledged her errors, aggravating circumstances also existed. Miss. Comm'n on Judicial Performance v. Darby, 143 So. 3d 564 (Miss. 2014).

Judge was publicly reprimanded, fined, and assessed costs of the proceeding because the judge, among other things, mentioned to counsel in chambers, but did not make a disclosure on the record, that his father might have been tested for asbestosis, failed to disclose the history of his parent's asbestosis claims, and the settlement between the judge's father and one of the parties, and failed to rule on counsel's motion to recuse made after the conflict was discovered. Miss. Comm'n on Judicial Performance v. Bowen, 123 So. 3d 381 (Miss. 2013).

Judge was publicly reprimanded, suspended, and fined because he committed willful misconduct and conduct prejudicial to the administration of justice when he recused himself from cases and reinserted himself and took further action in the cases and abused the contempt power; however, there was no evidence of any premeditation, that the judge's conduct was done to satisfy any personal desires, or that the judge personally gained from his actions. Miss. Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

Judge committed willful misconduct and conduct prejudicial to the administration of justice, bringing the judicial office into disrepute, because the judge recused himself from cases, and then, with full knowledge that he was recused, reinserted himself and took further action in the cases; the judge abused the contempt power by issuing arrest warrants for indirect criminal contempt that led to parents being held without bond for seventy-two hours without notice or a hearing. Miss. Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

As a judge violated Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 3(B)(4), and 3(C)(1), and Miss. Const. art, VI, § 177A by attempting to use his office to advance the private interests of his tenant and himself as landlord, and by being impatient and discourteous and abusing his contempt power when arguing with a probation officer, and he had a pattern of prior misconduct, he was publicly reprimanded and fined. Miss. Comm'n on Judicial Performance v. Fowlkes, 121 So. 3d 904 (Miss. 2013).

Judge was publicly reprimanded and assessed costs because his actions in 1) having ex parte contact with a defendant; 2) not disclosing this to the prosecutor; 3) dismissing the defendant's tickets without a hearing or notice to the prosecutor; and 4) falsifying court records violated Miss. Code Jud. Conduct Canons 1, 2(B), 3(B)(1), 3(B(7), and 3(B(8) and constituted willful misconduct in office that brought the judicial office into disrepute under Miss. Const. art. VI, § 177A. Miss. Comm'n on Judicial Performance v. Carver, 107 So. 3d 964 (Miss. 2013).

Judge was publicly reprimanded and suspended for 30 days for misconduct which brought the judicial office into disrepute pursuant to Miss. Const. art. VI, § 177A in failing to properly adjudicate criminal matters, and engaging in ticket-fixing, in exchange for simultaneous payments to a "drug fund" established and maintained by the town police chief, which violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), 3B(2), 3B(8); the judge admitted that his decision to accept the lesser pleas contingent on payments into the drug fund was at least partially motivated by his desire to collect fees for the town, and this was not a mistake of the law, but a clear disregard of it, and was sanctionable. After considering the Gibson factors, the commission's recommendation was adopted. Miss. Comm'n on Judicial Performance v. Smith, 109 So. 3d 95 (Miss. 2013).

Judge's remarks violated Miss. Code Jud. Conduct Canons 1, 2(A) & (B), 3(B)(5), constituting willful misconduct in the judicial office which brought the judicial office into disrepute, thus causing the judge's conduct to be actionable pursuant to Miss. Const. Art. 6, § 177A; the judge's comments were disparaging results and not matters of legitimate public concern and went beyond the realm of protected campaign speech. Miss. Comm'n on Judicial Performance v. Osborne, — So. 2d —, 2009 Miss. LEXIS 9 (Miss. Feb. 5, 2009), opinion withdrawn by, substituted opinion at 11 So. 3d 107, 2009 Miss. LEXIS 278 (Miss. June 18, 2009).

Mississippi Commission on Judicial Performance had no direct authority or power to order punishment on a justice court judge after a formal complaint was filed, alleging violations of Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(5), 3B(7), and 3B(8); a memorandum of understanding reached between the judge and the Commission was considered by the court but was not binding on the court in assessing the judge's punishment. Miss. Comm'n on Judicial Performance v. Martin, 995 So. 2d 727 (Miss. 2008).

Judge was publicly reprimanded and assessed costs of $ 100 because the judge violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(8), and 3C(1) by failing to timely issue rulings in cases; the judge established a pattern of delays in rendering opinions, giving the appearance that the judge failed diligently to perform judicial duties. Miss. Comm'n on Judicial Performance v. Agin, 987 So. 2d 418 (Miss. 2008).

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 2A, B; the judge's reference to his knowledge of the law was a blatant attempt to use his office either as an advantage with the officers at the scene, or as an intimidation tactic. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

Where the Mississippi Commission on Judicial Performance, acting on information from a police officer, filed a formal complaint against a municipal court judge, accusing the judge of inappropriately engaging in "fixing" traffic tickets, it was determined that the judge used his position to fix tickets by "passing" them to the file without requiring defendants to appear and over the objections from the issuing officer; clear and convincing evidence showed that the judge's actions violated numerous Miss. Code Jud. Conduct Canons as well as Miss. Const. Art. 6, § 177A; whether the judge's actions were actually willful was of no consequence because the result was the same regardless of whether bad faith or negligence and ignorance were involved and warranted sanctions. Miss. Comm'n on Judicial Performance v. Gordon, 955 So. 2d 300 (Miss. 2007).

In handling several matters set before his court, a judge was found to be in violation of the Miss. Code of Jud. Conduct as well as the Mississippi Constitution where the judge ackowledged that his actions, in refusing to allow a defendant to present evidence, in presiding over a probation revocation matter in which there were recusal issues, in trying a defendant in absentia, and in revoking bail and issuing an arrest warrant, violated the Code of Judicial Conduct; public reprimand, suspension from office, and assessment of a fine and costs were warranted. Miss. Comm'n on Judicial Performance v. Roberts, 952 So. 2d 934 (Miss. 2007).

State supreme court granted a joint motion for the approval of the recommendation of sanctions against a judge who violated Miss. Code Jud. Conduct Canon 3(E) by participating in proceedings where there was an admitted conflict of interest, and committed willful misconduct that brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Cowart, 936 So. 2d 343 (Miss. 2006).

Judge's suspension of the fines and State assessments were in response to the county's lack of funding for a court bailiff, and said conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute. However, the record did not show any other incidents that demonstrated that his behavior evidenced a pattern of conduct, there was no moral turpitude involved, and mitigating circumstances were also present in light of the fact that the judge acknowledged the inappropriateness of his conduct and was in agreement with the findings of the Mississippi Commission of Judicial Performance; thus, a public reprimand, a fine, and payment of the costs of the proceedings was a proper sanction. Miss. Comm'n on Judicial Performance v. Sheffield, 883 So. 2d 546 (Miss. 2004).

Judge's actions involving the issuance of an ex parte temporary order changing child custody without notice to the nonmovant, without providing a copy of the order to the nonmovant, and later refusing to allow the nonmovant to be heard, constituted willful misconduct in violation of Miss. Const. Art. 6, § 177A and Miss. Code Jud. Conduct Canons 1, 2A, 3A(1) and (4), and 3B(1). Miss. Comm'n on Judicial Performance v. Perdue, 853 So. 2d 85 (Miss. 2003).

Although there was no proof that a judge willfully intended to misuse a sentencing statute, where she did misuse it and subsequently did nothing to correct her error, and also made a false statement under oath regarding the sentencing, she violated canons 1, 2, and 3. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

Judge's irregularities and improprieties, both on and off the bench, amounted to willful misconduct in office; sanctions of public reprimand, $1,500 fine, and thirty day suspension without pay were appropriate in light of judge's prior discipline for similar conduct. Mississippi Comm'n on Judicial Performance v. Franklin, 704 So. 2d 89 (Miss. 1997).

Justice court judge was publicly reprimanded, fined $2,628.00, and assessed costs, for numerous violations and irregularities in the disposition of various cases. Mississippi Comm'n on Judicial Performance v. Emmanuel, 688 So. 2d 222 (Miss. 1996).

Justice court judge was removed from office for misconduct in the performance of his judicial duties, in view of the number of offenses committed as well as his denial of any wrongdoing. Mississippi Judicial Performance Comm'n v. Hopkins, 590 So. 2d 857 (Miss. 1991).

It was immaterial that justice court judge may not have known the law, that he was negligent, or that he did not understand the law; removal from office was warranted, where judge failed to file 28 of his DUI adjudications and 552 other routine traffic offenses with the Department of Public Safety. In re Quick, 553 So. 2d 522 (Miss. 1989).

Mishandling of funds.

Former judge's failure to pay office-related charges to vendors after being reimbursed for such charges by the State was willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute, and he was publicly reprimanded. Miss. Comm'n on Judicial Performance v. Teel, 863 So. 2d 973 (Miss. 2004).

Justice court judge was removed from the bench and assessed costs, on charges of judicial misconduct including: entering orders without authority, accepting money without authority, acting outside his legal authority to sign an execution of judgment, improper handling of DUI charges, and interference with rotation of cases. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180 (Miss. 1996).

Justice court judge was removed from office for using his judgeship for his own pecuniary benefit, where he collected fines or fees and failed to remit them to the court clerk. Mississippi Judicial Performance Comm'n v. Coleman, 553 So. 2d 513 (Miss. 1989).

Judge was removed from office for his misappropriation and mishandling of money collected by virtue of his office as justice court judge. In re Stewart, 490 So. 2d 882 (Miss. 1986).

Justice court judge was fined $1,400, publicly reprimanded, and removed from office for misappropriation of funds over a period of seven years. In re Brown, 458 So. 2d 681 (Miss. 1984).

Justice court judge violated this canon by utilizing criminal process or threat of criminal process to collect civil debts, failing to properly docket and process bad check cases, failing to collect civil court costs deposit in advance from merchants, failing to keep records required of his office, and collecting court costs from county in cases which were never docketed. In re Odom, 444 So. 2d 835 (Miss. 1984).

Justice court judge was fined and publicly reprimanded for using criminal process to collect civil debts, failing to properly docket and process bad checks, failing to properly collect and account for contributions to county law library fund, collecting fees in excess of statutory maximum and paying fees in excess of statutory maximum to court officials, and having a pecuniary interest in the outcome of litigation filed in his court. In re Lambert, 421 So. 2d 1023 (Miss. 1982).

Justice court judge was removed from office for mishandling and unlawfully converting public money to his own use. In re Anderson, 412 So. 2d 743 (Miss. 1982).

Negligence.

While the judge did delay in issuing a ruling in a case in violation of Miss. Code Jud. Conduct Canon 1, 2A, 3B(8) and 3C(1), the court did not find willfulness under Miss. Const., art. 6, § 177A(b), (c), but did find negligence. The judge testified that he was presented a case of first impression for him and that it wasn't his intention that it be held up, and the summary judgment hearing was held approximately ten days after he had started treatment for a serious medical condition, with those treatments continuing for a period of several months. Miss. Comm'n on Judicial Performance v. Agin, 17 So. 3d 578 (Miss. 2009).

Misconduct or misfeasance of judges are not to be tolerated on any ground, particularly not on grounds of ignorance or incompetence. In re Garner, 466 So. 2d 884 (Miss. 1985).

A judge may, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to administration of justice so as to bring judicial office into disrepute; result is the same, regardless of whether bad faith or negligence and ignorance are involved, and warrants sanctions. In re Anderson, 451 So. 2d 232 (Miss. 1984).

Personal conduct.

Order that the judge be suspended from office for a period of one year was appropriate because his disparaging racial remarks were not protected speech under either the federal or state constitution. The judge's remarks violated Miss. Code Jud. Conduct Canons 1, 2(A) and (B), and 3(B)(5), thus causing the judge's conduct to be actionable under Miss. Const. art. VI, § 177A. Miss. Comm'n on Judicial Performance v. Osborne, 11 So. 3d 107 (Miss. 2009).

Judge was publicly reprimanded, assessed costs of proceedings, and fined after he and a woman wrote over $ 330,000 in bad checks for a house and motor vehicles because any economic injury suffered by the businesses visited by the judge and the woman had been repaid. Although writing checks for insufficient funds was reprehensible conduct for a judge, usually it had to be in conjunction with some other inappropriate act or acts before warranting removal. Miss. Comm'n on Judicial Performance v. Hartzog, 904 So. 2d 981 (Miss. 2004).

A judge violated Canons 1 and 2A where he was arrested for and pleaded guilty to first offenses driving under the influence. Mississippi Comm'n on Judicial Performance v. Thomas, 722 So. 2d 629 (Miss. 1998).

The record supported the conclusion that a judge's offensive comments to members of the court staff constituted gross personal conduct in violation of Canons 1, 2A, 2B, 3A(1), 3A(3) and 3B(1). Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Municipal judge who used firearm to detain three individuals on his neighbor's property, and who shot out a tire on their vehicle in the process, received sanctions of public reprimand, fine of $2,500, and assessment of costs. Mississippi Comm'n on Judicial Performance v. Whitten, 687 So. 2d 744 (Miss. 1997).

Justice court judge's relationship with defendant who appeared before her, and her subsequent marriage to that individual, damaged reputation and integrity of her judicial office and justified her removal from office. Mississippi Comm'n on Judicial Performance v. Milling, 651 So. 2d 531 (Miss. 1995).

Sanctions.

Recommended sanction of a public reprimand and a $ 500 fine by the Mississippi Commission on Judicial Performance was supported because a judge's misconduct resulted in a warrant not being issued, and the judge meddled in a case involving his own interests and gave an order he should not have given, but it was his first disciplinary matter; because the judge acted in an official capacity in a case in which he was a party and had a conflicting interest, he acted improperly. Miss. Comm'n on Judicial Performance v. Burton, — So. 3d —, 2019 Miss. LEXIS 178 (Miss. Apr. 25, 2019).

Judge committed misconduct in ordering a defendant to serve six months in a work center for a conviction defendant had already appealed, and for which he had already satisfied his sentence; the court issued a 120-day suspension without pay, a public reprimand, and a fine, plus the assessment of costs, as the judge had been both privately admonished and publicly reprimanded for past misconduct, his conduct in this case was clearly negligent, and his failure to take personal responsibility for his error constituted an aggravating factor. Miss. Comm'n on Judicial Performance v. Sheffield, 235 So. 3d 30 (Miss. 2017).

Judge was publicly reprimanded, suspended for 30 days without pay, fined $1,100, and assessed costs of $200 because he threatened use of a weapon on a defendant, interrogated that the defendant concerning his use of drugs, which had no bearing on the charge before the court, and interrogated, demeaned, and intimidated the defendant's mother about the defendant's drug use and her parenting skills, had a history with the Commission on Judicial Performance, and engaged in willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 227 So. 3d 952 (Miss. 2017).

Judge was publicly reprimanded, fined $3,000, and taxed with the costs of the proceedings because he gave a landlord legal advice, granted unrequested relief, entered an unsupported judgment, disregarded applicable rules of law, irreparably harmed the tenant, failed to acknowledge any wrongdoing, and attempted to lay blame on others for his conduct. Miss. Comm'n on Judicial Performance v. Judge, 227 So. 3d 938 (Miss. 2017).

Chancellor was publicly reprimanded, suspended for thirty days without pay, fined, and ordered to pay costs for violating the Code of Judicial Conduct because it was it inappropriate to extend his suspension beyond thirty days; in the past, the supreme court instituted thirty-day suspensions without pay for judges who had deprived citizens of their liberty and who had attempted to subvert and obstruct criminal proceedings, and the chancellor had not been investigated or disciplined before. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

ATTORNEY GENERAL OPINIONS

A judge should recuse himself to avoid a conflict of interest, and the nature of the charge against the accused would make no difference as to recusal. Miller, Feb. 3, 2006, A.G. Op. 06-0019.

RESEARCH REFERENCES

ALR. Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If

Case Cannot Be Heard Otherwise. 27 A.L.R.6th 403.

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

A. Judicial Duties in General. The judicial duties of judges take precedence over all their other activities. The judges' judicial duties include all the duties of their office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide all assigned matters within the judge's jurisdiction except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) Judges shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacities, and shall require similar conduct of lawyers, and of their staffs, court officials, and others subject to their direction and control.

Commentary

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business like while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. A judge shall refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.

Commentary

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeco-

nomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to all who are legally interested in a proceeding, or their lawyers, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized: provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) Judges may obtain the advice of a disinterested expert on the law applicable to a proceeding before them if the judges give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge *must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 3B(7)(b) regarding a proceeding pending or impending before the judge. A judge must not independently investigate facts in a case and must consider only the evidence presented.*

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprized of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in *cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by Rule 3.6 of the Rules of Professional Conduct.*

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(12) Except as may be authorized by rule or order of the Supreme Court, a judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

Commentary

The ABA Model Code does not address broadcasting, televising, recording or photographing in the courtroom. This provision is taken from the Section 3A(7) of the prior Mississippi Code of Judicial Conduct.

Section 3B(12) prohibits broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto except as authorized by rule or order of the Supreme Court. The Supreme Court has now adopted the Rules for Electronic and Photographic Coverage of Proceedings which provides detailed guidance for such coverage.

[Commentary amended effective April 17, 2003.]

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

Commentary

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

(5) A judge shall not appoint a major donor to the judge's election campaign to a position if the judge knows or learns by means of a timely motion that the major donor has contributed to the judge's election campaign unless

(a) the position is substantially uncompensated;

(b) the person has been selected in rotation from a list of qualified and available persons compiled without regard to their having made political contributions; or

(c) the judge or another presiding or administrative judge affirmatively finds that no other person is willing, competent and able to accept the position.

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

Commentary

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

E. Disqualification.

(1) Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where:

Commentary

Under this rule, a judge should disqualify himself or herself whenever the judge's impartiality might be questioned by a reasonable person knowing all the circumstances, regardless whether any of the specific rules in Section 3E(1) apply.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

For procedures concerning motions for recusal and review by the Supreme Court of denial of motions for recusal as to trial court judges, see M.R.C.P. 16A, URCCC 1.15, Unif. Chanc. R. 1.11, and M.R.A.P. 48B. For procedures concerning motions for recusal of judges of the Court of Appeals or Supreme Court justices, see M.R.A.P. 27(a).

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Commentary

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section

3E(1)(b); judges formerly employed by a government agency, however, should disqualify themselves in a proceeding if the judges' impartiality might reasonably be questioned because of such association.

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might be questioned by a reasonable person knowing all the circumstances" under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) Recusal of Judges from Lawsuits Involving Major Donors. A party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge. Such motions will be filed, considered and subject to appellate review as provided for other motions for recusal.

Commentary

Section 3E(2) recognizes that political donations may but do not necessarily raise concerns about a judge's impartiality. The filing, consideration and appellate review of motions for recusal based on such donations are subject to rules governing all recusal motions. For procedures concerning motions for recusal and review by the Supreme Court of denial of motions for recusal as to trial court judges, see M.R.C.P. 16A, URCCC 1.15, Unif. Chanc. R. 1.11, and M.R.A.P. 48B. For procedures concerning motions for recusal of judges of the Court of Appeals or Supreme Court justices, see M.R.A.P. 27(a). This provision does not appear in the ABA Model Code of Judicial Conduct; however, see Section 3E(1)(e) of the ABA model.

F. Remittal of Disqualification. A judge who may be disqualified by the terms of Section 3E may disclose on the record the basis of the judge's possible disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Commentary

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the possible disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on the remittal or waiver of the possible disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

JUDICIAL DECISIONS

In general.
Cameras in courtroom.
Disqualification.
— Not required.
— Required.
Exceeding scope of authority.
Improper communications.
Miscellaneous misconduct.
Mishandling of funds.
Personal conduct.
Public reprimand.
Recusal.
Suspension.

In general.

Judge presided over an inmate's plea hearing and his post-conviction relief motion and the inmate had not provided any evidence that the judge was biased based on the fact that he presided over both hearings, for purposes of Miss. Code Jud. Conduct Canon 3(E). Gaddy v. State, 21 So. 3d 677 (Miss. Ct. App. 2009), writ of certiorari denied by 559 U.S. 1078, 130 S. Ct. 2115, 176 L. Ed. 2d 741, 2010 U.S. LEXIS 3422, 78 U.S.L.W. 3611 (2010).

In a custody case, there was no motion to recuse the chancellor under Miss. Code Jud. Conduct Canon 3(E)(1)(a); therefore, the issue was not properly preserved for review. Bellais v. Bellais, 931 So. 2d 665 (Miss. Ct. App. 2006).

Removal from office was an appropriate punishment for a judge who interfered with the prosecution of a domestic violence and assault case against the judge's son because in attempting to use his position to obtain favorable treatment for his son, the judge discredited the dignity and integrity of his office and the judiciary. However while the judge's attempts to coerce the sheriff department's attorney into dismissing the charges against his son were inappropriate in any setting and violated other canons of the Code of Judicial Conduct, the record did not demonstrate that the judge's discussion disrupted the order and decorum of the proceedings before the judge at the time, therefore the Commission had not shown by clear and convincing evidence that the judge's conduct violated Miss. Code Jud. Conduct Canon 3B(3). Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247 (Miss. 2005).

In the context of recusal of a judge, and the presumption that a judge is qualified and unbiased, the stringent "beyond a reasonable doubt" burden is incompatible with the standard of a hypothetical "reasonable person knowing all the circumstances." The proper standard is that recusal is required when the evidence produces a "reasonable doubt" as to the judge's impartiality. Dodson v. Singing River Hosp. Sys., 839 So. 2d 530 (Miss. 2003).

Where a former husband filed a complaint to modify alimony, the former wife's motion for recusal was properly granted given that the husband was an attorney, and it was the common practice of chancellors in the district to recuse themselves in contested matters involving attorneys who practiced in the district. Steiner v. Steiner, 788 So. 2d 771 (Miss. 2001).

Mississippi has an objective test in determining when a judge should recuse himself; a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality. Hunter v. State, 684 So. 2d 625 (Miss. 1996), reh'g denied, 691 So. 2d 1026 (Miss. 1996).

If a reasonable person, knowing all the circumstances, would harbor doubts about judge's impartiality, he is required to recuse himself, and supreme court enforces this judicial ethic rigorously, notwithstanding lack of litigant's specific demand. Aetna Casualty & Sur. Co. v. Berry, 669 So. 2d 56 (Miss. 1996).

Husband in divorce proceeding should have been allowed to present evidence in support of his motion for judge's recusal, where a fairminded, objective observer could have reasonably questioned judge's impartiality in view of substantial role which wife's witnesses could play in professional future of judge's son-in-law. Buchanan v. Buchanan, 587 So. 2d 892 (Miss. 1991).

A judge may, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to administration of justice so as to bring judicial office into disrepute; result is the same, regardless of whether bad faith or negligence and ignorance are involved, and warrants sanctions. In re Anderson, 451 So. 2d 232 (Miss. 1984).

Cameras in courtroom.

Judge was privately reprimanded for allowing photography during a court hearing; the court examined several factors: (1) the length and character of the judge's public service; (2) whether there was any prior case law on point; (3) the magnitude of the offense and the harm suffered; (4) whether the misconduct was an isolated incident or evidences a pattern of conduct; (5) whether moral turpitude was involved; and, (6) the presence or absence of mitigating or aggravating circumstances before disregarding the Mississippi Commission on Judicial Conduct's recommendation for a public reprimand. Miss. Comm'n on Judicial Performance v. Blakeney, 905 So. 2d 521 (Miss. 2004).

Trial judge who allowed arraignment and initial appearance proceedings to be photographed and videotaped by representatives of the news media who thereafter printed or broadcast the photographs and tapes to the public was in clear violation of both the letter and spirit of Miss. Code Jud. Conduct Canon 3A(7). State Comm'n on Judicial Performance v. Carr, 786 So. 2d 1055 (Miss. 2001).

Prohibition on use of cameras in courtroom except under specific circumstances was not unconstitutional; there was no fundamental right to broadcast from courtroom, and there were legitimate and rational reasons for prohibition's existence, including state's interest in preserving order and decorum, preserving truth-seeking function of a trial, and protection of a defendant's rights. Associated Press v. Bost, 656 So. 2d 113 (Miss. 1995).

Defendant objected three times during course of trial to presence of television cameras, and having lacked defendant's consent, trial court erred in allowing television cameras within courtroom during trial. Brantley v. State, 610 So. 2d 1139 (Miss. 1992).

Disqualification.

Defendant's motion for recusal of a second judge was not timely filed and was waived; notwithstanding the waiver, defendant had not pointed to any specific rulings indicating that the judge was biased or unqualified to rule on his motions. Donaldson v. State, 262 So. 3d 1135 (Miss. Ct. App. 2018), writ of certiorari denied by 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. Jan. 31, 2019).

Motion to recuse was filed two years after the motion to dismiss and the recusal motion was thus not timely filed and was waived; notwithstanding the waiver, defendant had not pointed to any specific rulings that indicated that the judge was biased or unqualified to rule on his motions. Donaldson v. State, 262 So. 3d 1135 (Miss. Ct. App. 2018), writ of certiorari denied by 260 So. 3d 800, 2019 Miss. LEXIS 59 (Miss. Jan. 31, 2019).

Recusal of judge who had previously prosecuted defendant was not required because the judge was in no way involved in defendant's current prosecution. Johnson v. State, 194 So. 3d 191 (Miss. Ct. App. 2016).

Fact that the judge who presided over defendant's trial for the sale of methamphetamine might, while in his role as a county district attorney, have prosecuted defendant for other crimes, was not in and of itself sufficient to overcome the presumption of the judge's impartiality such that he should have recused himself from the methamphetamine trial. West v. State, 131 So. 3d 583 (Miss. Ct. App. 2013), writ of certiorari denied by 132 So. 3d 579, 2014 Miss. LEXIS 90 (Miss. Feb. 6, 2014).

Judge who abused his contempt powers, failed to recuse himself from contempt proceedings, and prevented those he charged with contempt from presenting any defense, violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), (2), and (4), and 3E(1)(A), as well as Miss. Const. art. VI, § 177A; he was fined $2,500 and publicly reprimanded. Miss. Comm'n on Judicial Performance v. Harris, 131 So. 3d 1137 (Miss. 2013).

As a trial judge's remarks from a pretrial hearing, which the jury did not hear, did not produce a reasonable doubt as to his impartiality, he did not commit manifest error by denying defendant's motion to recuse himself Fulks v. State, 110 So. 3d 764 (Miss. 2013).

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county prosecuting attorney in an earlier youth-court shelter hearing regarding the child's custody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing. Miller v. State, 94 So. 3d 1120 (Miss. 2012).

Trial judge abused his discretion in declining to recuse himself in a prosecution for aggravated assault and forcible rape of child, since he had served as county prosecuting attorney in an earlier youth-court shelter hearing regarding the child's custody as a result of the events giving rise to the criminal charges, and 1) the threshold issue in that hearing was whether the complainant was an "abused child" under Miss. Code Ann. § 43-21-105(m), which went to the heart of the issue of defendant's guilt; 2) the judge might have personal knowledge of disputed evidentiary facts concerning the criminal case due to his participation in the youth-court shelter hearing.. Miller v. State, 94 So. 3d 1120 (Miss. 2012).

Fact that the trial judge had both represented and prosecuted defendant in the past, without more, did not overcome the presumption of impartiality or require recusal under Miss. Code Jud. Conduct Canon 3. Slade v. State, 42 So. 3d 25 (Miss. Ct. App. 2009).

In the parties' divorce action, the wife's allegation that the chancellor should have recused himself under Miss. Code Jud. Conduct Canon 3(E)(1) and (2) was without merit because she failed to show any evidence beyond a reasonable doubt that the chancellor was biased or unqualified thereby requiring his recusal in the case. There was not a reasonable basis to form a conclusion that there was a question of impartiality. Faerber v. Faerber, 13 So. 3d 853 (Miss. Ct. App. 2009).

Where plaintiffs, a father and a son, claimed the trial court erred in denying their motion for recusal of two county judges because two defendants, both county attorneys also worked for the county, the argument was rejected in that it was not error to have found that the motion was untimely because, while plaintiffs argued they had filed their motion within 30 days of learning that the attorneys were employed by the county, their complaint clearly alleged the attorneys were acting in their official capacities, and further, there was no evidence the attorneys were well known by either judge. Blake v. Wilson, 962 So. 2d 705 (Miss. Ct. App. 2007).

State supreme court granted a joint motion for the approval of the recommendation of sanctions against a judge who violated Miss. Code Jud. Conduct Canon 3(E) by participating in proceedings where there was an admitted conflict of interest, and committed willful misconduct. Miss. Comm'n on Judicial Performance v. Cowart, 936 So. 2d 343 (Miss. 2006).

Denial of the inmate's petition for post-conviction relief was proper where his argument that the judge should not have presided over the revocation hearing was not preserved for review because he did not raise the issue at the revocation proceeding. In addition, it was without merit pursuant to Miss. Code Jud. Conduct Canon 3E(1) because the judge was exercising his authority under Miss. Code Ann. § 47-7-37 to issue a warrant for the inmate's arrest for a probation violation; thus, he was acting within his statutory authority and there was no indication that he was unqualified or biased. Hubbard v. State, 919 So. 2d 1022 (Miss. Ct. App. 2005).

— Not required.

Trial court did not abuse its discretion in denying plaintiff's motion for recusal where plaintiff failed to produce any evidence regarding either allegation of impropriety; plaintiff produced no evidence that the court administrator had any material input into the court's judicial decisions. Hill v. Mills, 26 So. 3d 322 (Miss. 2010).

It was not error for the same judge to hear an inmate's plea and motion for post-conviction relief, the inmate stated in his plea colloquy that he was satisfied with the assistance provided by his attorney, and a different result would not have occurred if the inmate's attorney would have objected to the judge presiding over both hearings, such that this did not rise to the level of ineffective assistance of counsel. Gaddy v. State, 21 So. 3d 677 (Miss. Ct. App. 2009), writ of certiorari denied by 559 U.S. 1078, 130 S. Ct. 2115, 176 L. Ed. 2d 741, 2010 U.S. LEXIS 3422, 78 U.S.L.W. 3611 (2010).

Removal from office was an appropriate punishment for a judge who interfered with the prosecution of a domestic violence and assault case against the judge's son because in attempting to use his position to obtain favorable treatment for his son, the judge discredited the dignity and integrity of his office and the judiciary. However while the judge's conduct was inappropriate in any setting and violated other canons of the Code of Judicial Conduct, the record did not demonstrate that the judge's conduct violated Miss. Code Jud. Conduct Canon 3B(1) pertaining to matters "assigned" to a judge, because there was no evidence to show the judge was assigned any matter relating to the charges against his son or any other matter from which he should have disqualified himself. Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247 (Miss. 2005).

Where department store was sued for racial profiling customers in store security measures, the trial court was not required to recuse an African-American female judge who stated in a news broadcast that she believed the Jackson, Mississippi, Police Department engaged in racial profiling. The store failed to overcome the presumption that the trial judge was unbiased and qualified. Dillard's, Inc. v. Scott, 908 So. 2d 93 (Miss. 2005).

Trial court did not violate Miss. Code Jud. Conduct Canon 3. Trial judge's alleged impartiality was not apparent merely because he had presided over previous criminal proceedings against defendant, or because he had sequestered the names of the jurors. King v. State, 897 So. 2d 981 (Miss. Ct. App. 2004), writ of certiorari denied by 896 So. 2d 373, 2005 Miss. LEXIS 224 (Miss. 2005).

Trial judge was not required to recuse himself from a trial where defendant was charged with armed robbery at a bank simply because the judge's wife worked for a company that operated a number of banks. Jack v. State, 878 So. 2d 1078 (Miss. Ct. App. 2004).

In movant's motion to recuse an appellate court judge pursuant to Miss. R. App. P. 48C(b), the movant alleged that the judge had a bias based on statements in the judge's successful appellate court campaign that the judge would fight the special interest groups — like the personal injury lawyers who had created the lawsuit industry; however, because (1) the judge's voting record during his tenure on the appellate court did not indicate that he lacked impartiality towards a personal injury plaintiff represented by a personal injury lawyer and (2) the judge voted in the movant's favor on the merits, a reasonable person, knowing all the circumstances, could not question the judge's impartiality, Miss. Code Jud. Conduct Canon 3(E)(1)(a). Thus, the motion to recuse the judge and the motion to reconsider the judge's denial of the recusal motion were properly denied. Doe v. Stegall, 900 So. 2d 357 (Miss. 2004).

Although the chancellor did make references in the trial court to the decedent and their ex parte communications just prior to his death, the record did not show that the trial court based its decision on these; the evidence was not adequate to support a finding that a reasonable person would harbor doubts about the chancellor's impartiality. Weissinger v. Simpson, 861 So. 2d 984 (Miss. 2003).

In a capital murder case, the inmate's counsel were not ineffective for failing to move for recusal of the judge under Miss. Code of Jud. Conduct Canon 3 because the judge's decision to disallow introduction of the sheriff's conviction for impeachment purposes was proper and the judge's comments did not evidence partiality. Wilcher v. State, 863 So. 2d 776 (Miss. 2003), writ of certiorari denied by 542 U.S. 942, 124 S. Ct. 2917, 159 L. Ed. 2d 821, 2004 U.S. LEXIS 4678, 72 U.S.L.W. 3768 (2004).

In a murder prosecution, the fact that the trial judge's former law firm represented the codefendant's father in a matter having no relation to the trial at issue, and that the prosecutor practiced law with the judge for several years, did not oblige the judge to recuse himself based on these coincidences. Jones v. State, 841 So. 2d 115 (Miss. 2003).

Defendant's mere expression of an intention to file a lawsuit against his trial judge, without more, was insufficient to require that judge to recuse himself. Kolberg v. State, 829 So. 2d 29 (Miss. 2002), writ of certiorari denied by 538 U.S. 981, 123 S. Ct. 1787, 155 L. Ed. 2d 672, 2003 U.S. LEXIS 3010, 71 U.S.L.W. 3666 (2003).

Trial judge's involvement in a prior prosecution of defendant did not compromise the judge's impartiality and the evidence did not support a finding that the trial judge's impartiality was compromised; thus, reversal of defendant's conviction for uttering a false check was not required. Brown v. State, 829 So. 2d 93 (Miss. 2002).

In a child custody case, a mother acquiesced to a judge hearing her case where she failed to raise the issue of recusal until after the case was decided against her; therefore, the judge was not required to recuse himself voluntarily under Miss. Code Jud. Conduct Canon 3C(1). Watts v. Watts, — So. 2d —, 2002 Miss. App. LEXIS 673 (Miss. Ct. App. Nov. 26, 2002), opinion withdrawn by, substituted opinion at, remanded by 854 So. 2d 11, 2003 Miss. App. LEXIS 143 (Miss. Ct. App. Mar. 11, 2003).

The trial court did not err in denying a motion for recusal where the judge had absolutely no memory of a purported conversation regarding the facts of the case and he also had no memory of a previous action involving the defendant. Hodnett v. State, 787 So. 2d 670 (Miss. Ct. App. 2001).

A judge was not required to recuse herself sua sponte because the status of a potential witness as an employee of the court created an appearance of impropriety. Taylor v. State, 789 So. 2d 787 (Miss. 2001).

A judge was not required to recuse himself with regard to the issuance of a search warrant on the ground that he was serving as district attorney when the defendant was earlier indicted for a separate unrelated offense. Luckett v. State, 797 So. 2d 339 (Miss. Ct. App. 2001).

While total recusal might have been the better course of action, the trial judge did not abuse his discretion in failing to disqualify himself on the basis that, as an assistant district attorney, he had signed indictments that led to prior convictions of the defendant as he had no involvement in that portion of the trial, i.e., sentencing, where these prior convictions were relevant. Jackson v. State, 778 So. 2d 786 (Miss. Ct. App. 2001).

A trial judge who heard a guilty plea which was later overturned was qualified to sit for the subsequent trial, notwithstanding an allegation of bias, where an exhaustive review of the record revealed no evidence of bias. Farmer v. State, 770 So. 2d 953 (Miss. 2000).

Judge's recusal was not required where defendant failed to provide sufficient evidence that there was a personal conflict between defense counsel and the judge that would lead reasonable-minded persons to question whether the judge would have personal bias or prejudice toward defendant. Walker v. State, 759 So. 2d 422 (Miss. Ct. App. 1999).

The trial judge did not err when he refused to recuse itself since his conduct did not show a personal bias or prejudice concerning a party; the defendant cited no instances where the judge improperly admitted or excluded evidence as a result of his alleged bias and failed to provide any other evidence of bias. Steed v. State, 752 So. 2d 1056 (Miss. Ct. App. 1999).

The trial judge did not err in not recusing himself from a criminal prosecution, notwithstanding that he signed the search warrant in the case, where the judge recused himself from the suppression hearing and testified in the suppression hearing that he had no recollection of the facts of the case, and no prejudice or bias was alleged or discovered from a review of the record. Wallace v. State, 741 So. 2d 938 (Miss. Ct. App. 1999).

Mere fact that trial judge hears a case, even an election case, in county where judge may sometime in future run for reelection, does not alone give rise to reasonable doubt as to his impartiality. McFarland v. State, 707 So. 2d 166 (Miss. 1997).

Because judge's relationship to doctor criticized by party did not appear to cast doubts on judge's impartiality, and because judge evaluated doctor's recommendations for indications of undue influence, judge did not err in not recusing himself from case. Bredemeier v. Jackson, 689 So. 2d 770 (Miss. 1997).

Where judge had no personal knowledge concerning issue before court during evidentiary hearing, and defendant offered no evidence to produce a reasonable doubt as to judge's impartiality, there was no manifest abuse of trial court's discretion in failing to recuse himself from the evidentiary hearing. Neal v. State, 687 So. 2d 1180 (Miss. 1996).

Fact that one of arson defendant's attorneys was trial judge's brother-in-law did not require judge's recusal, where judge informed parties that attorney was his brother-in-law and parties clearly agreed to judge's continued service as trial judge. Dowbak v. State, 666 So. 2d 1377 (Miss. 1996).

There was no evidence of prejudice or impropriety requiring trial judge's recusal from murder trial, where judge's former law firm, and specifically his nephew, had represented victim in his divorce from his wife, in which defendant was the wife's named paramour. Hunter v. State, 684 So. 2d 625 (Miss. 1996), reh'g denied, 691 So. 2d 1026 (Miss. 1996).

Trial judge who was district attorney at time defendant was indicted did not err in failing to recuse himself from sitting at defendant's arraignment, where defendant was given opportunity to object to him sitting as his judge, but instead conferred with counsel and specifically waived any objections. Banana v. State, 635 So. 2d 851 (Miss. 1994).

Trial judge's failure to recuse himself sua sponte, for his remarks at sentencing, was not a manifest abuse of discretion; his comment in favor of strict handgun control reflected his personal bias, but this was not "personal bias or prejudice concerning a party" as contemplated by subdivision (C) of this canon, and a reasonable person, knowing all the circumstances, would not have doubted the judge's impartiality. Green v. State, 631 So. 2d 167 (Miss. 1994).

Presumption that a judge is qualified and unbiased may only be overcome by evidence showing beyond a reasonable doubt that the judge was biased or not qualified; if a reasonable person, knowing all the circumstances, would doubt the judge's impartiality, the judge is required to recuse him or herself from the case.

Collins v. Joshi, 611 So. 2d 898 (Miss. 1992).

Judge did not violate this canon by refusing to recuse himself from sitting at defendant's trial on charges of embezzlement; although judge had known defendant for approximately nine years, there was no indication of any bias or prejudice for or against him. Medley v. State, 600 So. 2d 957 (Miss. 1992).

Chancellor did not abuse his discretion in refusing to recuse himself in action against former conservator of estate; limited evidence and limited contacts presented did not overcome presumption of chancellor's impartiality beyond a reasonable doubt. Bryan v. Holzer, 589 So. 2d 648 (Miss. 1991).

Supreme court justice who had been Attorney General during time of defendant's extradition from Illinois was not required to recuse himself from participating in defendant's appeal, where judge had no personal involvement in, or actual knowledge of, defendant's case while in office, and his office's involvement in defendant's actual extradition was minimal. Turner v. State, 573 So. 2d 657 (Miss. 1990), cert. denied, 500 U.S. 910, 111 S. Ct. 1695, 114 L. Ed. 2d 89 (1991).

There was no error in trial judge's sitting in review of defendant's motion for new trial, based on fact that judge had previously, as county attorney, charged defendant with removing a pickup truck from state with intent to defraud a lien holder. Cantrell v. State, 507 So. 2d 325 (Miss. 1987).

Where chancellor, in his former position as county attorney, had represented respondent in two U.R.E.S.A. proceedings more than ten years previously, this did not require chancellor's disqualification, as his representation was largely an administrative task and did not create any reasonable doubt about his impartiality. Rutland v. Pridgen, 493 So. 2d 952 (Miss. 1986).

— Required.

Trial judge's verdict of guilt was reversed where his investigation into the contemptuous allegations, his interrogation of an investigator, and his personal knowledge and involvement gave him substantial personal involvement in the prosecution and would have led a reasonable person to have reasonable doubt about the judge's impartiality. Terrell v. State, 166 So. 3d 549 (Miss. Ct. App. 2015).

In patient's suit against hospital, where a large firm represented the hospital, one of the firm's partners had served as treasurer in the judge's election campaign, and other lawyers from the firm had represented the judge and his wife for four years in a defective residential construction case, without charge. Under a totality of the circumstances analysis, a reasonable person could have had reasonable doubts as to the judge's impartiality, and the patient was entitled to a new trial before another trial judge. Dodson v. Singing River Hosp. Sys., 839 So. 2d 530 (Miss. 2003).

In a suit brought by the patient against the hospital for damages she sustained when a wheelchair attendant pushed the wheelchair in which she was riding into a door, the trial judge should have recused himself as a result of his ties to the law firm that represented the hospital. Dodson v. Singing River Hosp. Sys., — So. 2d —, 2002 Miss. LEXIS 407 (Miss. Dec. 5, 2002), opinion withdrawn by, substituted opinion at, remanded by 839 So. 2d 530, 2003 Miss. LEXIS 91 (Miss. Mar. 6, 2003).

The trial judge should have recused himself from a murder prosecution where, at the defendant's arraignment, he stated that he had engaged in ex parte communications with investigators in the case, that he considered these investigators to be reliable, and that the defendant did not act in self-defense. McGee v. State, 820 So. 2d 700 (Miss. Ct. App. 2000).

A chancellor did not abuse her discretion in refusing to recuse herself where (1) she worked for a law firm, which representing one party, over a decade before the hearing of the case, and then only for a few months, and (2) her work with another attorney, who represented the same party on the projects involved in the litigation, did not involve those projects, and the chancellor left that office several years prior to the validation hearings. McBride v. Meridian Pub. Imp. Corp., 730 So. 2d 548 (Miss. 1998).

Where a judge allowed intervention in a will contest by a company that he was assisting in locating a barge landing site for a county landfill, at the same time that he was negotiating with the proponent of the will, and ruled in favor of the company, he violated Canons 1, 2 A, 2 B, 3 A(1), 3 A(4), 3 C, 3 D, 5 C(1) and 5 F. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

Where a judge became involved in lease negotiations pertaining to a barge landing site for a county landfill, and advised one party to the lease on the benefits of dealing with the landfill and drafting the lease agreement himself, he violated Canons 1, 2 A, 2 B, 3 A(1), 3 C, 5 C(1) and 5 F, as well as §§ 9-1-25 and 23-15-975. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

Trial judge should have recused himself in action against insurance company for bad faith settlement of claim, where co-counsel for plaintiff had represented judge in his divorce and had been deeply involved in judge's re-election campaign. Aetna Casualty & Sur. Co. v. Berry, 669 So. 2d 56 (Miss. 1996).

Judge who served part-time—pro tem as a municipal court judge, and also engaged in private criminal defense practice, received sanction of public reprimand for assuming role of attorney, and presumably accepting a fee, for representing a defendant and attempting to reduce the same bond which he, as city judge, had earlier set for that defendant. Mississippi Comm'n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994).

There was an unavoidable conflict of interest in a single person serving both as mayor and as judge, with the potential for bringing the judicial office into disrepute, and therefore municipal judges were ordered to be suspended according to statute and rules of Commission on Judicial Performance. In re Municipal Judges, 631 So. 2d 758 (Miss. 1994).

Judge's former representation of hospital, and personal tension between himself and plaintiffs' counsel, created a conflict of interest which would lead a reasonable-minded person to question judge's ability to be impartial, and therefore judge should have recused himself from medical malpractice case. Davis v. Neshoba County Gen. Hosp., 611 So. 2d 904 (Miss. 1992).

Judge abused his discretion in refusing to recuse himself from malpractice action against physician and hospital, where his representation of hospital trustees and participation in physician's employment created appearance of a conflict of interest. Collins v. Joshi, 611 So. 2d 898 (Miss. 1992).

Judge who served as district attorney at the time defendant was initially indicted should have recused himself on his own motion from hearing defendant's case. Frierson v. State, 606 So. 2d 604 (Miss. 1992).

Judge should have disqualified himself from sitting as trial judge, where he had acted as prosecutor during defendant's indictment. Jenkins v. State, 570 So. 2d 1191 (Miss. 1990).

Where judge's brother was a senior partner in law firm representing hospital, and there were allegations and testimony that medical community assisted in electing judge, a reasonable person with knowledge of the circumstances would harbor doubts about judge's impartiality, and therefore judge should have recused himself from sitting in action against hospital. In re Moffett, 556 So. 2d 723 (Miss. 1990).

Reversal was required, where trial judge had been both a witness to and adjudicator of central fact issues with respect to which he was obliged to play but one role. Collins v. Dixie Transp., Inc., 543 So. 2d 160 (Miss. 1989).

Judge should have disqualified himself from hearing case involving hospital; judge's family relationship to senior partner in law firm representing hospital, and allegations and testimony that medical community had assisted in electing judge, would lead a reasonable person to harbor doubts about judge's impartiality. Jenkins v. Forrest County Gen. Hosp., 542 So. 2d 1180 (Miss. 1988).

Exceeding scope of authority.

Judge was publicly reprimanded, fined $3,000, and taxed with the costs of the proceedings because he gave a landlord legal advice, granted unrequested relief, entered an unsupported judgment, disregarded applicable rules of law, irreparably harmed the tenant, failed to acknowledge any wrongdoing, and attempted to lay blame on others for his conduct. Miss. Comm'n on Judicial Performance v. Judge, 227 So. 3d 938 (Miss. 2017).

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge misused her authority as a drug court judge by keeping participants in the program longer than the law allowed and by presiding over a family member's case, but there was no evidence she acted with the intent of depriving the public of assets or exploiting her position for personal gain, and she had no disciplinary history. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Judge violated Miss. Code Jud. Conduct Canons 1, 2(A), 3(B)(1), (2), (4), and (8) by denying drug court participants due process. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Ann. § 9-23-15(2) and Miss. Code Jud. Conduct Canons 1, 2(A), and 3(B)(2) by accepting participants from other courts. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Ann. § 99-15-26(2)(a)(v) and Miss. Code Jud. Conduct Canons 1, 2(A), 3(B)(2) and (8), and 3(C)(1) because the judge kept drug court participants in the program over two years. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Judge violated Miss. Code Jud. Conduct 1, 2(A), 2(B), and 3(C)(1) because the judge tried to get a friend's bond-writing suspension lifted. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

Public reprimand against a judge was proper because he misused the powers of contempt and violated Miss. Code Jud. Conduct Canons 1, 3(B)(2), and 3(B)(8) when he held a defendant in criminal contempt for failing to recite the pledge of allegiance in open court. He violated Miss. Code Jud. Conduct Canons 2(A) and 3(B)(4) by incarcerating the defendant for expressing his rights under U.S. Const. amend. I. Miss. Comm'n on Judicial Performance v. Littlejohn, 62 So. 3d 968 (Miss. 2011).

Order that the judge be suspended for 30 days from office without pay, along with a public reprimand, a fine, and an assessment of costs was appropriate because he violated Miss. Code Jud. Conduct Canons 1, 2(A), (B), 3(A), (B)(1), (B)(2), and 3(B)(7) and his egregious actions constituted willful misconduct in office and conduct prejudicial to the administration of justice. By involving himself in another judge's cases and attempting to assist defendants with their tickets, the judge compromised the integrity and independence of the judiciary and his actions created an impression that certain defendants were in a special position to influence him. Miss. Comm'n on Judicial Performance v. McKenzie, 63 So. 3d 1219 (Miss. 2011).

Chancellor was publicly reprimanded for misconduct in violation of, inter alia, Miss. Code Jud. Conduct Canon 1, 2A, 3B(2), 3C(1) because the chancellor had issued subpoenas to two members of county board of supervisors, and during a later meeting with the board of supervisors, the chancellor admitted that he had failed to comply with the law in doing so; further, the commission found by clear and convincing evidence that the chancellor had engaged in willful misconduct in office and conduct prejudicial to the administration of justice which brought the office into disrepute, under Miss. Const. art. VI, § 177A. The record did not indicate any aggravating factors. Miss. Comm'n on Judicial Performance v. Buffington, 55 So. 3d 167 (Miss. 2011).

Mississippi Commission on Judicial Performance's finding that a justice court judge violated Miss. Code Ann. §§ 99-23-1, 99-23-5, 99-23-13, and Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3(B)(2), 3(B)(4), 3(B)(7), 3(B)(8), 3(C)(1), and Miss. Const. Art. VI, § 177A, was clearly and convincingly supported by the record because the judge exceeded her authority in repeatedly entering unlawful orders pertaining to peace bonds resulting in the incarceration of an accused. Miss. Comm'n on Judicial Performance v. Boland, 998 So. 2d 380 (Miss. 2008).

Judge's actions which failed to follow correct procedural safeguards of giving one accused of contempt a specific charge, notice and a hearing violated Miss. Code Jud. Conduct Canon 3(A)(1) and 3B(1). Miss. Comm'n on Judicial Performance v. Willard, 788 So. 2d 736 (Miss. 2001).

Although a judge's conduct in entering orders regarding a defendant at the same time the senior judge was also entering orders regarding that defendant in some of the same cases did not evidence the level of civility and professionalism expected of judges, the judge's conduct did not constitute a violation of the statute. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

A judge abused her contempt powers and thereby violated Canons 1, 2, and 3 when she held a newspaper reporter in contempt and put her in jail without following the proper procedures. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

Circuit court judge was not required to pay the fine that was recommended by the Mississippi Commission on Judicial Performance, but was publicly reprimanded and assessed costs for violating the canons of judicial conduct by abusing her contempt powers and illegally expunging the drug convictions of two persons. Mississippi Comm'n on Judicial Performance v. Sanders, 749 So. 2d 1062 (Miss. 1999).

A judge violated Section 177A of the Mississippi Constitution of 1890, as amended and judicial canons 1, 2A, 2B, and 3A(1) of the Mississippi Code of Judicial Conduct when he willfully and improperly reduced DUI charges against several defendants, and he would be publicly reprimanded, fined $1,500, and ordered to pay all costs associated with the case. Mississippi Comm'n on Judicial Performance v. Jones, 735 So. 2d 385 (Miss. 1999).

Where a judge suspended the sentences previously entered in two cases with the full knowledge that she lacked jurisdiction to enter such orders and without considering the Uniform Post Conviction Relief Act, she violated Canons 1, 2A, 3A(1), 3A(4), and 3B(1) of the Code of Judicial Conduct. Mississippi Comm'n on Judicial Performance v. Sanders, 708 So. 2d 866 (Miss. 1998).

Judge was publicly reprimanded, fined $1500, and taxed with costs for his post-sentencing release of four state prisoners in excess of his authority. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Municipal court judge who incarcerated a defendant without notice or hearing, and who sentenced a defendant to more jail time than allowed by law and found same defendant guilty of perjury based upon judge's own affidavit and warrant, was sanctioned by public reprimand and taxation of costs. Mississippi Comm'n on Judicial Performance v. Fletcher, 686 So. 2d 1075 (Miss. 1996).

Justice court judge was removed from the bench and assessed costs, on charges of judicial misconduct including: entering orders without authority, accepting money without authority, acting outside his legal authority to sign an execution of judgment, improper handling of DUI charges, and interference with rotation of cases. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180 (Miss. 1996).

Where justice court judge found litigant in contempt for what judge perceived as a direct attack on him personally, rather than on the court, judge's action was in direct violation of case law and Code of Judicial Conduct, and constituted willful misconduct in office and conduct prejudicial to administration of justice. Mississippi Judicial Performance Comm'n v. Walker, 565 So. 2d 1117 (Miss. 1990).

Justice court judge was removed from office for continuing misconduct involving ticket fixing and adjudicating criminal matters without a hearing or notice to officer. In re Hearn, 542 So. 2d 901 (Miss. 1989).

Justice court judge was publicly reprimanded for mishandling an eviction and past due rent case, which culminated in judge's ordering tenant imprisoned for non-payment of civil debt. In re Bailey, 541 So. 2d 1036 (Miss. 1989).

County court judge was removed from office for charging excessive fines, using county prisoners for personal and county work, and deciding more than 100 misdemeanor cases "off the record," for which there were no case files, docket entries, or other records of filing or disposition in office of circuit clerk. In re Collins, 524 So. 2d 553 (Miss. 1987).

Justice court judge violated this canon by utilizing criminal process or threat of criminal process to collect civil debts, failing to properly docket and process bad check cases, failing to collect civil court costs deposit in advance from merchants, failing to keep records required of his office, and collecting court costs from county in cases which were never docketed. In re Odom, 444 So. 2d 835 (Miss. 1984).

Change of primary physical custody of the child from the father to the mother was proper pursuant to Miss. Code Jud. Conduct Canon 3(B)(4) because, even though the chancellor's remarks were clearly inappropriate, the error arising therefrom was harmless. The record revealed ample evidence that supported the chancellor's finding on every issue except that of visitation, which the appellate court remanded for further proceedings; thus, the appellate court was unable to find that the chancellor's improper conduct affected a substantial right of the parties. Schmidt v. Bermudez, 5 So. 3d 1100 (Miss. Ct. App. 2008), reversed by, remanded by 5 So. 3d 1064, 2009 Miss. LEXIS 104 (Miss. 2009).

Improper communications.

Circuit court abused its discretion in appointing a special master where she gave little consideration to the insurer's objection, gave the special master broad authority, explicitly authorized the special master to participate in ex parte communications with counsel in clear violation of Miss. Code Jud. Conduct Canon 3B(7), and by imposing a concealed-billing approach, prevented determination of the reasonableness of the special master's compensation. Safeco INS. Co. of Am. v. State Ex Rel. Hood, — So. 3d —, 2019 Miss. LEXIS 296 (Miss. Aug. 22, 2019).

County justice court judge, who also served as a pastor, had violated Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(7), 3B(8), 3B(11), 3C(1), 3E(1), and 4A, and Miss Const. art. 6, § 177A, where he had contacted an investigator about a prostitution charge against the daughter of a friend and had sua sponte remanded the charge to the file, and had contacted another investigator and inquired about the arrest and pending charges of his parishioner's daughter. In addition to the public remand and $500 fine recommended by the Mississippi Commission on Judicial Performance, the judge was suspended without pay for 30 days. Miss. Comm'n on Judicial Performance v. Sutton, — So. 3d —, 2019 Miss. LEXIS 253 (Miss. July 18, 2019).

Justice court judge was suspended from office for ninety days without pay and was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3B(2), 3B(4), 4A, and Miss. Const. art. 6, § 177A, where the judge engaged in ex parte communications with a female litigant and inappropriately handled a fine reduction. Allegations that the judge made sexual advances toward the female litigant were not established by clear and convincing evidence. Miss. Comm'n on Judicial Performance v. Boone, 60 So. 3d 172 (Miss. 2011).

Public reprimand imposed against a judge was proper because he had engaged in ex parte communications with parties involved in a disturbance-of-the-peace case and also entered a plea of not guilty for one of the parties. That misconduct violated Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 3(B)(4), and 3(B)(7), and was willful, prejudicial to the administration of justice, and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 10 So. 3d 486 (Miss. 2009).

Judge's actions in engaging in ex parte communications with community members constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute, Miss. Const. Art. 6, § 177A; the judge's actions violated Miss. Code Jud. Canons 1, 2A, 2B, 3B(2), and 3B(7); he was publicly reprimanded and suspended for sixty days. Miss. Comm'n on Judicial Performance v. Carr, 990 So. 2d 763 (Miss. 2008).

County judge was ordered to be publicly reprimanded and suspended for 30 days because he repeatedly engaged in prohibited ex parte conversations with a litigant and offered advice as to actions that the litigant should take to advance her case. Miss. Comm'n on Judicial Performance v. Fowlkes, 967 So. 2d 12 (Miss. 2007).

Recommendation for a public reprimand was not adopted since it was too lenient for a judge who committed willful misconduct under Miss. Const. Art. 6, § 177A by violating Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(7), 3B(8), and 3C(1) when he engaged in improper ex parte communications; moreover, he ignored Miss. Code Ann. § 9-11-33 and Miss. Unif. R. P. J. Ct. 2.06 when he set aside a final judgment and interfered with orders handed down by another judge. Miss. Comm'n on Judicial Performance v. Britton, 936 So. 2d 898 (Miss. 2006).

County justice court judge was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 4(A)(1)-(3) as he ordered that his grandson's driver's license be reinstated (after the grandson pled nolo contendere to DUI) and attempted to have a sheriff allow the grandson to serve his time in a local jail instead of a state facility. Miss. Comm'n on Judicial Performance v. Cole, 932 So. 2d 9 (Miss. 2006).

Removal from office was an appropriate punishment for a judge who interfered with the prosecution of a domestic violence and assault case against the judge's son because in attempting to use his position to obtain favorable treatment for his son, the judge discredited the dignity and integrity of his office and the judiciary. However, while the judge's communications with the jailer, the arresting office, the prosecutor, and the clerk were inappropriate and contrary to the fair administration of justice, they were not ex parte communications prohibited under Canon 3B(7), which have been has consistently been applied to cases in which the alleged ex parte communication was between a judge and a party to a case before the judge. Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247 (Miss. 2005).

Judge's repeated pattern of misconduct involving ex parte communications with litigants, the improper dismissal of a litigant's default judgment, and sexual misconduct, coupled with his failure to pay costs assessed in prior disciplinary proceedings or to submit to a public reprimand warranted his removal from office and an assessment of all costs of the current proceeding and the costs previously assessed. By engaging in a repeated patter of ex parte communications with litigants, the judge failed to uphold the integrity and independence of the judiciary in violation of many of the Canons of the Code of Judicial Conduct, and in particular Miss. Code Jud. Conduct Canon 3B(7). Miss. Comm'n on Judicial Performance v. Lewis, 913 So. 2d 266 (Miss. 2005).

Finding in favor of the patient in his medical malpractice action was improper pursuant to Miss. Code Jud. Conduct Canon 3(B)(7) where the judge erred when she called a doctor on her own initiative, without informing either party of her intentions to do so, and without allowing either party to explore the basis of the doctor's opinion. Blake v. Clein, 903 So. 2d 710 (Miss. 2005).

A judge violated § 9-11-11 and Canons 1, 2A, 2B, 3A(1), 3A(4), 3A(5), and 3B(1) where he failed to promptly dispose of the court's business and discharge his administrative duties, he allowed his relationship with the court clerk to affect his duties, and he engaged in ex parte communications which required his recusal in 44 cases within a short period of time. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Justice court judge was publicly reprimanded, fined $1,450 and assessed costs, for dismissing speeding and traffic tickets, and for holding ex parte communications with defendants. Mississippi Comm'n on Judicial Performance v. Bowen, 662 So. 2d 551 (Miss. 1995).

Where justice court judge directed that judgment in a particular case be held, and later attempted to change the judgment after ex parte communications with a party, his actions were improper and warranted public reprimand and fine of $250. Mississippi Comm'n on Judicial Performance v. Underwood, 644 So. 2d 458 (Miss. 1994).

Justice court judge was removed from office for ticket fixing, ex parte communications, and abuse of his contempt powers. Mississippi Comm'n on Judicial Performance v. Chinn, 611 So. 2d 849 (Miss. 1992).

Miscellaneous misconduct.

Judge violated the Canon because he committed willful misconduct by interfering with an arrest warrant that another judge had issued, and the judge was also a party in that matter; the judge's willful misconduct prejudiced the administration of justice and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Burton, — So. 3d —, 2019 Miss. LEXIS 178 (Miss. Apr. 25, 2019).

Stipulation of the Mississippi Commission on Judicial Performance (Commission) and a judge agreeing to the judge's judicial misconduct and issuing a public reprimand and fine was accepted because (1) the judge admittedly committed misconduct by not issuing final orders in 28 civil cases held in abeyance and issuing an order in a civil case without holding a promised hearing, constituting misconduct in office and conduct prejudicial to the administration of justice bringing the judicial office into disrepute, (2) the misconduct denied citizens prompt decisions they were entitled to and caused them unnecessary expense, (3) the judge was previously disciplined, and, (4) in mitigation, the judge cooperated with the Commission and ultimately entered orders in cases in which the judge retained jurisdiction. Miss. Comm'n on Judicial Performance v. McGee, — So. 3d —, 2019 Miss. LEXIS 137 (Miss. Apr. 4, 2019).

Supreme court accepted and affirmed the recommendation of the Mississippi Commission on Judicial Performance for a public reprimand of the judge because she was involved in her relatives' cases; she failed to adjudicate the domestic abuse cases properly by dismissing the matters without a hearing or order; she erred in ordering the refund of an expungement fee; she sought the removal of the complainant from her job; she violated the statute dealing with justice court fees; and her conduct was prejudicial to the administration of justice. Miss. Comm'n on Judicial Performance v. Curry, 249 So. 3d 369 (Miss. 2018).

Judge's actions violated various canons, given that he ordered a defendant to serve six months in a work center for a conviction defendant had already appealed, and for which he already had satisfied his sentence, plus the judge was discourteous toward defendant in the face of his attempt to point out the judge's errors; the judge's failure to devote sufficient attention to the record before him did not represent the high standards of conduct required and his actions were anything by competent. Miss. Comm'n on Judicial Performance v. Sheffield, 235 So. 3d 30 (Miss. 2017).

In a case in which defendant appealed from a judgment convicting him of four counts of sexual battery and one count of exposing another to HIV, the appellate court concluded that defendant did not prove the trial judge was biased or that the alleged bias affected defendant's sentence. McCoy v. State, 205 So. 3d 687 (Miss. Ct. App. 2016), writ of certiorari denied by 205 So. 3d 1082, 2016 Miss. LEXIS 511 (Miss. Dec. 8, 2016).

Mississippi Commission on Judicial Performance did not prove by clear and convincing evidence that the chancellor gave testimony he knew or should have known would be misleading because it did not provide any sworn testimony to contradict the chancellor's plausible version of events. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

Chancellor violated the Code of Judicial Conduct because he signed ex parte orders concerning a ward, and the signature of the attorney for the ward's mother, without additional notarization, was insufficient support for an order touching upon the administration of the conservatorship; by accepting unsworn petitions and failing to conduct further inquiry, the chancellor exhibited negligence with regard to the administration of the ward's estate. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

Judge violated Miss. Code Jud. Conduct 2(A), and 3(B)(2) and (4) because the judge denied a defendant the defendant's choice of counsel. Miss. Comm'n on Judicial Performance v. Thompson, 169 So. 3d 857 (Miss. 2015).

In a case where a judge stipulated to multiple incidents where she denied citizens their due process rights, the judge was removed from office based on violations of several judicial conduct canons, and the judge's resignation did not foreclose the need to apply appropriate sanctions. The judge admitted that she lacked the proper judicial temperament, her actions were serious, they constituted repeated misconduct, and they were willful; although mitigating circumstances existed because the judge acknowledged her errors, aggravating circumstances also existed. Miss. Comm'n on Judicial Performance v. Darby, 143 So. 3d 564 (Miss. 2014).

Judge committed willful misconduct and conduct prejudicial to the administration of justice, bringing the judicial office into disrepute, because the judge recused himself from cases, and then, with full knowledge that he was recused, reinserted himself and took further action in the cases; the judge abused the contempt power by issuing arrest warrants for indirect criminal contempt that led to parents being held without bond for seventy-two hours without notice or a hearing. Miss. Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

Judge was publicly reprimanded, suspended, and fined because he committed willful misconduct and conduct prejudicial to the administration of justice when he recused himself from cases and reinserted himself and took further action in the cases and abused the contempt power; however, there was no evidence of any premeditation, that the judge's conduct was done to satisfy any personal desires, or that the judge personally gained from his actions. Miss. Comm'n on Judicial Performance v. Skinner, 119 So. 3d 294 (Miss. 2013).

As a judge violated Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 3(B)(4), and 3(C)(1), and Miss. Const. art, VI, § 177A by attempting to use his office to advance the private interests of his tenant and himself as landlord, and by being impatient and discourteous and abusing his contempt power when arguing with a probation officer, and he had a pattern of prior misconduct, he was publicly reprimanded and fined. Miss. Comm'n on Judicial Performance v. Fowlkes, 121 So. 3d 904 (Miss. 2013).

Judge was publicly reprimanded and assessed costs because his actions in 1) having ex parte contact with a defendant; 2) not disclosing this to the prosecutor; 3) dismissing the defendant's tickets without a hearing or notice to the prosecutor; and 4) falsifying court records violated Miss. Code Jud. Conduct Canons 1, 2(B), 3(B)(1), 3(B(7), and 3(B(8) and constituted willful misconduct in office that brought the judicial office into disrepute under Miss. Const. art. VI, § 177A. Miss. Comm'n on Judicial Performance v. Carver, 107 So. 3d 964 (Miss. 2013).

Judge was publicly reprimanded and suspended for 30 days for misconduct which brought the judicial office into disrepute pursuant to Miss. Const. art. VI, § 177A in failing to properly adjudicate criminal matters, and engaging in ticket-fixing, in exchange for simultaneous payments to a "drug fund" established and maintained by the town police chief, which violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(1), 3B(2), 3B(8); the judge admitted that his decision to accept the lesser pleas contingent on payments into the drug fund was at least partially motivated by his desire to collect fees for the town, and this was not a mistake of the law, but a clear disregard of it, and was sanctionable. After considering the Gibson factors, the commission's recommendation was adopted. Miss. Comm'n on Judicial Performance v. Smith, 109 So. 3d 95 (Miss. 2013).

Defendant's convictions for felonious child abuse were appropriate, in part because, while comments made by the trial court might have been improper, the trial court gave a curative instruction stating that the comments had not been intended as commentary on the believability of the victim's testimony and requiring the jury to disregard the comments. The judge did not violate Miss. Code Jud. Conduct Canon 3(B)(4) or (5). Clark v. State, 40 So. 3d 531 (Miss. 2010).

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While the judge did delay in issuing a ruling in a case in violation of Miss. Code Jud. Conduct Canon 1, 2A, 3B(8) and 3C(1), the court did not find willfulness under Miss. Const., art. 6, § 177A(b), (c), but did find negligence. The judge testified that he was presented a case of first impression for him and that it wasn't his intention that it be held up, and the summary judgment hearing was held approximately ten days after he had started treatment for a serious medical condition, with those treatments continuing for a period of several months. Miss. Comm'n on Judicial Performance v. Agin, 17 So. 3d 578 (Miss. 2009).

Judge's remarks violated Miss. Code Jud. Conduct Canons 1, 2(A) & (B), 3(B)(5), constituting willful misconduct in the judicial office which brought the judicial office into disrepute, thus causing the judge's conduct to be actionable pursuant to Miss. Const. Art. 6, § 177A; the judge's comments were disparaging results and not matters of legitimate public concern and went beyond the realm of protected campaign speech. Miss. Comm'n on Judicial Performance v. Osborne, — So. 2d —, 2009 Miss. LEXIS 9 (Miss. Feb. 5, 2009), opinion withdrawn by, substituted opinion at 11 So. 3d 107, 2009 Miss. LEXIS 278 (Miss. June 18, 2009).

Mississippi Commission on Judicial Performance had no direct authority or power to order punishment on a justice court judge after a formal complaint was filed, alleging violations of Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(5), 3B(7), and 3B(8); a memorandum of understanding reached between the judge and the Commission was considered by the court but was not binding on the court in assessing the judge's punishment. Miss. Comm'n on Judicial Performance v. Martin, 995 So. 2d 727 (Miss. 2008).

Judge was publicly reprimanded and assessed costs of $ 100 because the judge violated Miss. Code Jud. Conduct Canons 1, 2A, 3B(8), and 3C(1) by failing to timely issue rulings in cases; the judge established a pattern of delays in rendering opinions, giving the appearance that the judge failed diligently to perform judicial duties. Miss. Comm'n on Judicial Performance v. Agin, 987 So. 2d 418 (Miss. 2008).

Mississippi Commission on Judicial Performance erred by finding that the judge violated Miss. Code Jud. Conduct Canon 3(B)(4) and (5) because the comment was not made at an adjudicative proceeding; however, she did violate Canon 3(C)(1) because at the conference, she made a derogatory remark which placed her impartiality at issue and her actions lacked professional courtesy and cooperation with others in the administration of court business. Miss. Comm'n on Judicial Performance v. Boland, 975 So. 2d 882 (Miss. 2008).

Where a judge violated Canons 1, 2B and 3B(2) of the Code of Judicial Conduct by expressing anger at a second judge for refusing to talk with him before signing an arrest warrant, and then instructing a deputy clerk not to issue the warrant, public reprimand was appropriate because such conduct created the appearance that the judge might be partial to certain interests and brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Thompson, 972 So. 2d 582 (Miss. 2008).

Where the Mississippi Commission on Judicial Performance, acting on information from a police officer, filed a formal complaint against a municipal court judge, accusing the judge of inappropriately engaging in "fixing" traffic tickets, it was determined that the judge used his position to fix tickets by "passing" them to the file without requiring defendants to appear and over the objections from the issuing officer; clear and convincing evidence showed that the judge's actions violated numerous Miss. Code Jud. Conduct Canons as well as Miss. Const. Art. 6, § 177A; whether the judge's actions were actually willful was of no consequence because the result was the same regardless of whether bad faith or negligence and ignorance were involved and warranted sanctions. Miss. Comm'n on Judicial Performance v. Gordon, 955 So. 2d 300 (Miss. 2007).

In handling several matters set before his court, a judge was found to be in violation of the Miss. Code of Jud. Conduct as well as the Mississippi Constitution where the judge ackowledged that his actions, in refusing to allow a defendant to present evidence, in presiding over a probation revocation matter in which there were recusal issues, in trying a defendant in absentia, and in revoking bail and issuing an arrest warrant, violated the Code of Judicial Conduct; public reprimand, suspension from office, and assessment of a fine and costs were warranted. Miss. Comm'n on Judicial Performance v. Roberts, 952 So. 2d 934 (Miss. 2007).

Where a justice court judge acted to cause a complaining officer to not show up for trial so that drunk driving charges could be dismissed for failure to prosecute, the Mississippi Supreme Court held, under Miss. Const. Art. 6, § 177A, that the offense involved moral turpitude, and imposed a 30-day suspension upon the judge. Miss. Comm'n on Judicial Performance v. Sanford, 941 So. 2d 209 (Miss. 2006).

There was no basis for a reversal stemming from an assertion of judicial misconduct in a medical malpractice action; observed friendliness towards one of the parties in the case by a former member of the judiciary, and that judge then associating with the trial judge by their own private conversation, were the kind of events best avoided during the conduct of a trial, but because the appellate court found no prejudice nor a sufficiently prompt objection, there was no basis for reversal. Scafide v. Bazzone, 962 So. 2d 585 (Miss. Ct. App. 2006), writ of certiorari denied by 962 So. 2d 38, 2007 Miss. LEXIS 435 (Miss. 2007).

Removal from office was an appropriate punishment for a judge who interfered with the prosecution of a domestic violence and assault case against the judge's son because in attempting to use his position to obtain favorable treatment for his son, the judge discredited the dignity and integrity of his office and the judiciary. Also in attempting to obstruct the justice system by interfering with the charges against his son, the judge was unfaithful to the law and he failed to maintain professional competence in violation of Miss. Code Jud. Conduct Canon 3B(2). Miss. Comm'n on Judicial Performance v. Brown, 918 So. 2d 1247 (Miss. 2005).

Judge's suspension of the fines and State assessments were in response to the county's lack of funding for a court bailiff, and said conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute. However, the record did not show any other incidents that demonstrated that his behavior evidenced a pattern of conduct, there was no moral turpitude involved, and mitigating circumstances were also present in light of the fact that the judge acknowledged the inappropriateness of his conduct and was in agreement with the findings of the Mississippi Commission of Judicial Performance; thus, a public reprimand, a fine, and payment of the costs of the proceedings was a proper sanction. Miss. Comm'n on Judicial Performance v. Sheffield, 883 So. 2d 546 (Miss. 2004).

While acting in an official capacity, judge violated Miss. Const. Art. VI, § 177A, Miss. Code Ann. § 9-11-33, and Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(A), 3(B)(2), 3(B)(7), 3(B)(8), 3(C)(1), 3(C)(2), 4(A), and 4(D)(1), by conducting ex parte communications with parties, rendering decisions without giving notice of hearings to parties, and habitually taking civil cases under advisement and failing to render timely decisions; a public reprimand, suspension for 30 days without pay, and payment of the costs of the proceeding was held to be appropriate discipline. Miss. Comm'n on Judicial Performance v. McPhail, 874 So. 2d 441 (Miss. 2004).

Judge's actions involving the issuance of an ex parte temporary order changing child custody without notice to the nonmovant, without providing a copy of the order to the nonmovant, and later refusing to allow the nonmovant to be heard, constituted willful misconduct in violation of Miss. Const. Art. 6, § 177A and Miss. Code Jud. Conduct Canons 1, 2A, 3A(1) and (4), and 3B(1). Miss.

Comm'n on Judicial Performance v. Perdue, 853 So. 2d 85 (Miss. 2003).

Although there was no proof that a judge willfully intended to misuse a sentencing statute, where she did misuse it and subsequently did nothing to correct her error, and also made a false statement under oath regarding the sentencing, she violated canons 1, 2, and 3. Mississippi Comm'n on Judicial Performance v. Byers, 757 So. 2d 961 (Miss. 2000).

Judge's irregularities and improprieties, both on and off the bench, amounted to willful misconduct in office; sanctions of public reprimand, $1,500 fine, and thirty day suspension without pay were appropriate in light of judge's prior discipline for similar conduct. Mississippi Comm'n on Judicial Performance v. Franklin, 704 So. 2d 89 (Miss. 1997).

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Judge's communications with detainee, her mother, arresting officer, and prosecuting attorney, and his interference with detainee's bonding process, constituted willful misconduct in office and conduct prejudicial to administration of justice, warranting public reprimand and taxation of costs. Mississippi Comm'n on Judicial Performance v. Vess, 692 So. 2d 80 (Miss. 1997).

Justice court judge was publicly reprimanded, fined $2,628.00, and assessed costs, for numerous violations and irregularities in the disposition of various cases. Mississippi Comm'n on Judicial Performance v. Emmanuel, 688 So. 2d 222 (Miss. 1996).

Justice court judge abused his authority by failing to comply with acknowledgment that he executed, and by entering orders in cases which were not pending before his court, justifying public reprimand and assessment of costs. Mississippi Comm'n on Judicial Performance v. Hartzog, 646 So. 2d 1319 (Miss. 1994).

Justice court judge was removed from office for misconduct in the performance of his judicial duties, in view of the number of offenses committed as well as his denial of any wrongdoing. Mississippi Judicial Performance Comm'n v. Hopkins, 590 So. 2d 857 (Miss. 1991).

Justice court judge received private reprimand for first infraction involving collecting fines, failing to sign criminal dockets, and dismissal of tickets, where there was no intent to be detrimental to law enforcement or judicial fairness, and no hint of dishonesty or attempt to gain political favor. Mississippi Judicial Performance Comm'n v. Justice Court Judge, 580 So. 2d 1259 (Miss. 1991).

Sanction of public reprimand and fine of $500 was not too harsh a punishment for judge's improper dismissal of non-moving violations and traffic tickets, assessment of excessive fees and costs, and failure to sign court dockets. Mississippi Judicial Performance Comm'n v. Cowart, 566 So. 2d 1251 (Miss. 1990).

It was immaterial that justice court judge may not have known the law, that he was negligent, or that he did not understand the law; removal from office was warranted, where judge failed to file 28 of his DUI adjudications and 552 other routine traffic offenses with the Department of Public Safety. In re Quick, 553 So. 2d 522 (Miss. 1989).

Justice court judge was publicly censured, fined $500, and suspended without pay for thirty days, for ordering or allowing an improper alteration of official court records, and for refusing to allow a debtor-defendant to redeem property replevined in his court and then purchasing the property himself at a price which appeared to be below market value. In re Mullen, 530 So. 2d 175 (Miss. 1988).

Justice court judge was publicly reprimanded and fined $250, for improper conduct in handling of speeding tickets, D.U.I. charges, and criminal bad check cases, and for interference with orderly assignment of cases by the justice court clerk. In re Hearn, 515 So. 2d 1225 (Miss. 1987).

Justice court judge violated this canon by disrupting court proceedings, accusing another judge and wildlife officers of impropriety, and acting on behalf of criminal defendants. In re Cooksey, 515 So. 2d 957 (Miss. 1987).

Mishandling of funds.

Former judge's failure to pay office-related charges to vendors after being reimbursed for such charges by the State was willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute, and he was publicly reprimanded. Miss. Comm'n on Judicial Performance v. Teel, 863 So. 2d 973 (Miss. 2004).

Justice court judge was removed from office for using his judgeship for his own pecuniary benefit, where he collected fines or fees and failed to remit them to the court clerk. Mississippi Judicial Performance Comm'n v. Coleman, 553 So. 2d 513 (Miss. 1989).

Judge was removed from office for his misappropriation and mishandling of money collected by virtue of his office as justice court judge. In re Stewart, 490 So. 2d 882 (Miss. 1986).

Justice court judge was fined $1,400, publicly reprimanded, and removed from office for misappropriation of funds over a period of seven years. In re Brown, 458 So. 2d 681 (Miss. 1984).

Justice court judge was fined and publicly reprimanded for using criminal process to collect civil debts, failing to properly docket and process bad checks, failing to properly collect and account for contributions to county law library fund, collecting fees in excess of statutory maximum and paying fees in excess of statutory maximum to court officials, and having a pecuniary interest in the outcome of litigation filed in his court. In re Lambert, 421 So. 2d 1023 (Miss. 1982).

Justice court judge was removed from office for mishandling and unlawfully converting public money to his own use. In re Anderson, 412 So. 2d 743 (Miss. 1982).

Personal conduct.

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge failed to conduct herself in a courteous manner before litigants in her court, but there was no evidence she acted with the intent of depriving the public of assets or exploiting her position for personal gain, and she had no disciplinary history. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Order that the judge be suspended from office for a period of one year was appropriate because his disparaging racial remarks were not protected speech under either the federal or state constitution. The judge's remarks violated Miss. Code Jud. Conduct Canons 1, 2(A) and (B), and 3(B)(5), thus causing the judge's conduct to be actionable under Miss. Const. Art. VI, § 177A. Miss. Comm'n on Judicial Performance v. Osborne, 11 So. 3d 107 (Miss. 2009).

Justice court judge was publicly reprimanded and assessed costs as he committed willful misconduct in office and conduct prejudicial to the administration of justice which brought the office into disrepute in violation of Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(4), 3B(7), 3B(8), and 3C(1) by, among other things, failing to appear at the apartment inspection which he had scheduled in a landlord-tenant dispute, leaving an attorney and four apartment employees waiting without notification, and loudly and publicly chastising an attorney in open court. Miss. Comm'n on Judicial Performance v. Sutton, 985 So. 2d 322 (Miss. 2008).

Where a county judge had filed new actions within six months of his appointment after misinterpreting the law in Miss. Code Ann. §§ 9-1-25, 9-9-9, the appellate court held that the judge had not willfully abused the privilege of filing new complaints while in office, and the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004).

The record supported the conclusion that a judge's offensive comments to members of the court staff constituted gross personal conduct in violation of Canons 1, 2A, 2B, 3A(1), 3A(3) and 3B(1). Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

The judge's conduct violated Canons 1, 2, and 3 of the Code of Judicial Conduct when he came down from the bench, grabbed defendant around the head, used racial epithets and other inappropriate language, and then denied ever having met the defendant previously, when in fact, he had met him during a prior confrontation relating to the judge's private business. Mississippi Comm'n on Judicial Performance v. Guest, 717 So. 2d 325 (Miss. 1998).

Justice court judge's relationship with defendant who appeared before her, and her subsequent marriage to that individual, damaged reputation and integrity of her judicial office and justified her removal from office. Mississippi Comm'n on Judicial Performance v. Milling, 651 So. 2d 531 (Miss. 1995).

Public reprimand.

Recommended sanction of a public reprimand and a $ 500 fine by the Mississippi Commission on Judicial Performance was supported because a judge's misconduct resulted in a warrant not being issued, and the judge meddled in a case involving his own interests and gave an order he should not have given, but it was his first disciplinary matter; because the judge acted in an official capacity in a case in which he was a party and had a conflicting interest, he acted improperly. Miss. Comm'n on Judicial Performance v. Burton, — So. 3d —, 2019 Miss. LEXIS 178 (Miss. Apr. 25, 2019).

Recusal.

Trial judge properly denied a county board of supervisors' motion for recusal because the board did not point to any evidence in the record to support its claim that, viewed objectively, a reasonable person would question the judge's ability to remain unbiased and impartial in ruling on the merits of the dispute between school districts. Pearl River Cty. Bd. of Supervisors v. Miss. State Bd. of Educ., — So. 3d —, 2020 Miss. LEXIS 30 (Miss. Feb. 6, 2020).

Appellant's claim that the chancellor should have recused herself was without merit; the chancellor did not make any disparaging personal comments about appellant, nor did the transcript indicate any evidence of bias towards her, and it was not prejudicial for the chancellor to have reprimanded appellant on the record for not pursuing her own defense; furthermore, she did not file a motion to recuse the chancellor in the chancery court even after the Mississippi Supreme Court entered its order, and thus the issue was barred. Adams v. Rice, 249 So. 3d 463 (Miss. Ct. App. 2018).

Judge's comments and the judge's wife's positions on nonprofits' boards required no recusal because (1) a citizen did not show the comments indicated reluctance to rule for the citizen, (2) the judge and the judge's wife had no interest in a party litigant, and (3) nothing showed a decision in the case would substantially affect the judge or the judge's wife. Kinney v. S. Miss. Planning & Dev. Dist., 202 So. 3d 187 (Miss. 2016).

Chancellor did not err in not recusing himself because there was no evidence that the chancellor's impartiality would be questioned by a reasonable person where the ex-husband presented no evidence, only speculation, that the chancellor was biased in denying his counsel's motion to withdraw or because the chancellor previously issued an opinion in the matter that was reversed on appeal. Pearson v. Browning, 200 So. 3d 1080 (Miss. Ct. App. 2016).

Administrative judge's order denying recusal was not erroneous, as there was no indication in the record that the administrative judge exhibited any bias or prejudice against the claimant Mabus v. Mueller Indus., Inc., 205 So. 3d 677 (Miss. Ct. App. 2016), writ of certiorari denied by 205 So. 3d 1081, 2016 Miss. LEXIS 514 (Miss. Dec. 8, 2016).

Trial court did not abuse its discretion by denying the mother's motion to recuse itself from the termination of parental rights proceedings where the trial court directed the Department of Human Services to file the termination petition because, as required by law, it held a permanency hearing and made a determination regarding the children's best interests. Hall v. Jackson Cnty. Dep't of Human Servs. (In the Interest of B.A.H.), 225 So. 3d 1220 (Miss. Ct. App. 2016).

Mere fact that a judge has social contact with lawyers is not the issue and is not the basis for a recusal; however, accepting such a unilateral invitation while in the process of sitting in a contested matter is problematic and should be avoided.

Boatwright v. Boatwright, 184 So. 3d 952 (Miss. Ct. App. 2015), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 72 (Miss. Feb. 11, 2016), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 73 (Miss. Feb. 11, 2016), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 74 (Miss. Feb. 11, 2016).

Chancery court did not abuse its discretion in denying a former husband's motion for a new trial because its decision that there was no appearance of impartiality on behalf of a judge was supported by the evidence; although the judge accepted an invitation from the former wife's attorney he should have declined, the issue was brought to his attention, and he properly recused himself. Boatwright v. Boatwright, 184 So. 3d 952 (Miss. Ct. App. 2015), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 72 (Miss. Feb. 11, 2016), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 73 (Miss. Feb. 11, 2016), writ of certiorari denied by 185 So. 3d 385, 2016 Miss. LEXIS 74 (Miss. Feb. 11, 2016).

Chancellor in a property boundary line dispute was not required to have sua sponte made a recusal for having earlier prepared a deed which was entered into evidence or for having knowledge of the area where the chancellor lived. Mize v. Westbrook Constr. Co. of Oxford, LLC, 146 So. 3d 352 (Miss. Ct. App. 2013), reversed in part by, remanded by 146 So. 3d 344, 2014 Miss. LEXIS 443 (Miss. Sept. 4, 2014).

Defendant's argument that the trial judge should have recused himself from the second trial because he presided over the original trial was without merit because defendant failed to present any evidence of prejudice, bias, or abuse of discretion on the part of the trial judge because the only evidence of bias cited by defendant was the trial judge's failure to apply the Weathersby rule, but the Weathersby rule was not applicable to the case. Kiker v. State, 130 So. 3d 554 (Miss. Ct. App. 2013), writ of certiorari denied by 131 So. 3d 577, 2014 Miss. LEXIS 56 (Miss. Jan. 23, 2014).

Inmate's claim that the trial judge was biased failed as there was no basis for the trial judge to recuse himself under Miss. Code Jud. Conduct Canon 3E(1)(a) merely because he had presided over a related civil suit against the City alleging the City's and its police officers' negligence in pursuing the inmate; there was no evidence of personal bias or prejudice against the inmate, and there were no disputed evidentiary facts since the inmate entered a best interests plea. Sims v. State, 134 So. 3d 317 (Miss. Ct. App. 2013), affirmed by 134 So. 3d 300, 2014 Miss. LEXIS 161 (Miss. Mar. 20, 2014).

Judge was publicly reprimanded, fined, and assessed costs of the proceeding because the judge, among other things, mentioned to counsel in chambers, but did not make a disclosure on the record, that his father might have been tested for asbestosis, failed to disclose the history of his parent's asbestosis claims, and the settlement between the judge's father and one of the parties, and failed to rule on counsel's motion to recuse made after the conflict was discovered. Miss. Comm'n on Judicial Performance v. Bowen, 123 So. 3d 381 (Miss. 2013).

No manifest error occurred when a trial court denied a motion to recuse because plaintiff in the quiet title action failed to present evidence in support of the motion that raised any question as to the chancellor's impartiality. Although it was true that opposing counsel had represented the husband of the court administrator, the representation was in a separate and distinct criminal proceeding and the husband was not a party to the quiet title action. Sullivan v. Maddox, 122 So. 3d 75 (Miss. Ct. App. 2013), writ of certiorari denied by 119 So. 3d 328, 2013 Miss. LEXIS 453 (Miss. Aug. 29, 2013).

Circuit judge did not abuse his discretion in denying defendant's motion for recusal because defendant pointed to nothing in the record to support his claim that the judge's impartiality had to be questioned or that the judge was prejudiced against him. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

Circuit judge did not abuse his discretion in denying defendant's motion for recusal because defendant made no showing that the judge engaged in any improper ex parte communications or "earwigging" or that he had any personal knowledge of the disputed facts of defendant's case prior to trial; the communications at issue did not violate Miss. Unif. Cir. & Cty. R. 1.10 and were not improper. Patton v. State, 109 So. 3d 66 (Miss. 2012), writ of certiorari denied by 134 S. Ct. 687, 187 L. Ed. 2d 556, 2013 U.S. LEXIS 8618, 82 U.S.L.W. 3329 (U.S. Dec. 2, 2013).

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Alleged biased comments by the judge were only a snapshot of his entire statement and it was clear that the judge put aside his feelings as a father and sentenced an inmate according to the facts and the law, plus the comments did not express any prejudgment of the inmate that would have cast a reasonable doubt about the validity of the presumption of the judge's impartiality; thus, the court rejected the claim that the judge should have been recused under Miss. Code Jud. Conduct Canon 3(E). Gaddy v. State, 21 So. 3d 677 (Miss. Ct. App. 2009), writ of certiorari denied by 559 U.S. 1078, 130 S. Ct. 2115, 176 L. Ed. 2d 741, 2010 U.S. LEXIS 3422, 78 U.S.L.W. 3611 (2010).

Removal of the judge from office was appropriate because he violated Miss. Code Jud. Conduct Canons 1, 2(A), and 3(E) when he committed a minor child to detention after recusing himself from the case and then entered an order appointing another judge to hear the case without authority. His actions constituted willful misconduct in office and conduct prejudicial to the administration of justice and his assertion that his actions were a mere error of law was without merit. Miss. Comm'n on Judicial Performance v. Osborne, 16 So. 3d 16 (Miss. 2009).

Alleged biased comments by the judge were only a snapshot of his entire statement and it was clear that the judge put aside his feelings as a father and sentenced an inmate according to the facts and the law, plus the comments did not express any prejudgment of the inmate that would have cast a reasonable doubt about the validity of the presumption of the judge's impartiality; thus, the court rejected the claim that the judge should have been recused under Miss. Code Jud. Conduct Canon 3(E). Gaddy v. State, 21 So. 3d 677 (Miss. Ct. App. 2009), writ of certiorari denied by 559 U.S. 1078, 130 S. Ct. 2115, 176 L. Ed. 2d 741, 2010 U.S. LEXIS 3422, 78 U.S.L.W. 3611 (2010).

Not only was property owner's appeal of his motion to recuse a county court judge failed to abide by the requirements of Miss. R. App. P. 48B because it was improperly filed with the county court clerk, instead of with the Supreme Court of Mississippi and it did not contain a transcript of the recusal proceedings, but his motion for recusal did not abide by the requirement of Miss. Unif. Cir. & County Ct. Prac. R. 1.15 because it was not filed with the appropriate affidavit and was untimely. Furthermore, county court judge did not have to recuse himself under Miss. Code Jud. Conduct Canon 3(E)(1) or Miss. Unif. Cir. & County Ct. Prac. R. 1.15 because not only was the county court judge's prior knowledge merely from presiding over the case in open court, not from any sort of improper ex parte prior knowledge, but the owner's case was dismissed based on the statute of limitations, which did not require the county court judge to interpret his prior order. Whitley v. City of Pearl, 994 So. 2d 857 (Miss. Ct. App. 2008).

Circuit judge, who as an assistant district attorney had participated in a suspect's prosecution, was disqualified from ruling on the suspect's motion for post-conviction relief and should have recused himself because, even assuming that the suspect had effectively waived the judge's disqualification to preside over his guilty plea hearing, that waiver did not extend to the post-conviction proceeding, which was separate and distinct from the underlying criminal proceeding. Holmes v. State, 966 So. 2d 858 (Miss. Ct. App. 2007).

In a case alleging tortious interference with business relations, there was no error based on a trial judge's failure to recuse himself under Miss. Unif. Cir. & County Ct. Prac. R. 1.15 because the owners failed to raise the issue of alleged impartiality at the trial court level; the owners' website showed that they knew of a grounds for recusal at the time of trial, and even if the owners had not been able to raise this issue before the trial judge, a reversal would still not have been granted because the judge was not connected to the objectors by affinity or consanguinity, and he had no interest in the outcome of the case based on vague allegations that the judge had eaten at the owners' lodge. Bateman v. Gray, 963 So. 2d 1284 (Miss. Ct. App. 2007).

Order resentencing defendant to 25 years in prison for armed robbery was overturned and the case was remanded for resentencing by a special judge appointed by the Mississippi Supreme Court, where the judge who resentenced defendant should have remained recused for all purposes in the case. The judge,by recusing himself after a dispute with defendant's attorney, implicitly recognized that a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality. Payton v. State, 937 So. 2d 462 (Miss. Ct. App. 2006), writ of certiorari denied by 937 So. 2d 450, 2006 Miss. LEXIS 570 (Miss. 2006).

Standard test for recusal is that a judge must recuse himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality. Payton v. State, 937 So. 2d 462 (Miss. Ct. App. 2006), writ of certiorari denied by 937 So. 2d 450, 2006 Miss. LEXIS 570 (Miss. 2006).

Once recused, a judge should take no further action in the case. Payton v. State, 937 So. 2d 462 (Miss. Ct. App. 2006), writ of certiorari denied by 937 So. 2d 450, 2006 Miss. LEXIS 570 (Miss. 2006).

While there is a general presumption that a judge is qualified and unbiased, once a judge recuses himself from a case, the burden shifts to the judge to show affirmatively a valid reason to set aside the disqualification. Payton v. State, 937 So. 2d 462 (Miss. Ct. App. 2006), writ of certiorari denied by 937 So. 2d 450, 2006 Miss. LEXIS 570 (Miss. 2006).

Where the judge presiding over appellant's post-conviction motion served a prosecutorial role in the underlying criminal case, these functions were inherently contradictory-zealous advocate versus neutral adjudicator. The judge should have been recused. Ryals v. State, 914 So. 2d 285 (Miss. Ct. App. 2005).

Petitions for writ of mandamus for the recusal of a circuit judge in seven pending civil cases in which an attorney appeared were granted, pursuant to Miss. Code Judge. Conduct Canon 3(E)(1), as the impartiality of the judge towards the attorney was questioned and a reasonable person aware of all the circumstances would question whether the attorney's clients could get a fair hearing in the judge's court; however, the petitions were denied to the extent that they requested the judge's recusal in future cases in which the attorney appeared, as it was not the Supreme Court of Mississippi's practice to grant prospective recusal. In re Blake, 912 So. 2d 907 (Miss. 2005).

Pursuant to Miss. Code Jud. Conduct Canon 3, there was no evidence presented by the employee showing that the trial judge's son had a "legal" interest that could be substantially affected by the outcome of the proceeding; therefore, no objective reasonable person would conclude that the trial judge was not impartial; even had the trial judge made the disclosure, the ultimate result would be no different because there was no real basis for disqualification. Hathcock v. S. Farm Bureau Cas. Ins. Co., 912 So. 2d 844 (Miss. 2005).

In a child custody case, a motion for recusal based on the judge's partiality because the father's attorney had introduced the judge at a political rally was properly denied. Copeland v. Copeland, 904 So. 2d 1066 (Miss. 2004).

Denial of a motion for recusal of supreme court justices was proper where the motion failed to demonstrate facts that would have caused a reasonable person knowing all of the circumstances to doubt the justices' impartiality; the judges were perfectly capable of distinguishing between attorneys, their clients, and the legal issues that the attorney presented, even where animosity against the attorney might have existed, Miss. Code Jud. Conduct Canon 3E. Wash. Mut. Fin. Group, LLC v. Blackmon, 925 So. 2d 780 (Miss. 2004).

Suspension.

Judge committed misconduct in ordering a defendant to serve six months in a work center for a conviction defendant had already appealed, and for which he had already satisfied his sentence; the court issued a 120-day suspension without pay, a public reprimand, and a fine, plus the assessment of costs, as the judge had been both privately admonished and publicly reprimanded for past misconduct, his conduct in this case was clearly negligent, and his failure to take personal responsibility for his error constituted an aggravating factor. Miss. Comm'n on Judicial Performance v. Sheffield, 235 So. 3d 30 (Miss. 2017).

Judge was publicly reprimanded, suspended for 30 days without pay, fined $1,100, and assessed costs of $200 because he threatened use of a weapon on a defendant, interrogated that the defendant concerning his use of drugs, which had no bearing on the charge before the court, and interrogated, demeaned, and intimidated the defendant's mother about the defendant's drug use and her parenting skills, had a history with the Commission on Judicial Performance, and engaged in willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute. Miss. Comm'n on Judicial Performance v. Vess, 227 So. 3d 952 (Miss. 2017).

Chancellor was publicly reprimanded, suspended for thirty days without pay, fined, and ordered to pay costs for violating the Code of Judicial Conduct because it was it inappropriate to extend his suspension beyond thirty days; in the past, the supreme court instituted thirty-day suspensions without pay for judges who had deprived citizens of their liberty and who had attempted to subvert and obstruct criminal proceedings, and the chancellor had not been investigated or disciplined before. Miss. Comm'n on Judicial Performance v. Shoemake, 191 So. 3d 1211 (Miss. 2016).

ATTORNEY GENERAL OPINIONS

The intent of Canon 3B(12) prohibits the use of cameras in all courtrooms except under limited circumstances. Robinson, Jan. 3, 2003, A.G. Op. #02-0748.

Each judge must make a determination based on the facts and circumstances involved in each case whether that particular judge's impartiality might be reasonably questioned. If a reasonable person might question the judge's impartiality in a particular case, then the judge should recuse himself from that case. Littleton, Oct. 24, 2003, A.G. Op. 03-0563.

RESEARCH REFERENCES

ALR. Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If Case Cannot Be Heard Otherwise. 27 A.L.R.6th 403.

Canon 4. A Judge shall so conduct the Judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. *Extra-judicial Activities in General.* A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2C and accompanying Commentary.

B. *Avocational Activities.* A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not make an appearance before, or otherwise consult with, an executive or legislative body or official or a public hearing except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

Commentary

See Section 2B regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Commentary

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the improvement of the law, legal system or administration of justice as authorized by Section 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a non-governmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Section 4C(3).

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

Commentary

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice. See Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, *a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.*

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A *judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.*

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial positions, or involve them in frequent transactions with lawyers or persons likely to come before the court on which the judges serve.

(2) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as a judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(3) Neither judges nor members of their families residing in their households should accept a gift, bequest, favor, or loan from anyone reflecting the expectation of judicial favor.

(4) Non-public information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

Commentary

The prohibition of Section 4D(3), limiting gifts that judges and their families may accept, does not prohibit gifts incident to public testimonials to the judges, books supplied by publishers on a complimentary basis for official use, and invitations to judges and their spouses to attend bar-related functions or activities devoted to the improvement of the law, the legal system or the administration of justice. Judges and their families residing in their households may accept ordinary social hospitality, gifts, bequests, favors and loans *from relatives, wedding and engagement gifts, loans from lending institutions in the regular course of business on the same terms generally available to persons who are not judges, and scholarships and fellowships awarded on the same terms as those applied to other applicants. Judges and members of their families residing in their households may accept any other gifts, bequests, favors and loans only if the donor is not a party or likely to come before them, and the gifts are reported as may be required by law. Gifts, bequests, favors and loans are to be reported as may be required by the Ethics in Government statutes. See Miss. Code Ann. § 25-4-27. Section 4D differs from the provisions of the ABA model and retains in large part the provisions of the Mississippi Code of Judicial Conduct as it existed prior to the current revision. Although this section does not prohibit holding specific extra-judicial positions or engaging in other specific business activities, it does require that judges refrain from business activities that might reflect adversely on their impartiality and that they manage their business activities so as to minimize the need for recusal. Regarding recusals and disqualification, see Section 3E.*

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

Commentary

The Time for Compliance provision of this Code (Application, Section E) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings, the retention of which would place the judge in violation of Section 4D(3).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

Commentary

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. *Practice of Law.*

1. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

2. A judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not practice law in a representative capacity. Notwithstanding this prohibition, staff, court officials and others subject to the judge's direction may act pro se, and those otherwise licensed to practice law may, without compensation, give legal advice to and draft or review documents for members of their families.

Commentary

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. Judges may act for themselves in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2(B). Certain officials and others are exempt pursuant to Section D of the Application Section of the Code of Judicial Conduct.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter. This provision does not imply any privilege to practice law to those judges, staff members, court officials or others subject to the judge's control and direction who are not licensed to practice law. [Canon 4(G) and commentary amended May 31, 2007.]

H. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall comply with those provisions of law requiring the reporting of economic interest to the Mississippi Ethics Commission.

Commentary

See Commentary to Section 4D(4) regarding reporting of gifts, bequests and loans. See also Miss. Code Ann. §§ 25-4-25 through 29 regarding the filing of *statements of economic interest with the Mississippi Ethics Commission. The ABA model suggests that since Canon 6 in the 1972 model code was drafted, reporting requirements in most jurisdictions have become much more comprehensive, and that canons regulating reporting of income should be tailored to the requirements of individual jurisdictions. Subsection 4H 2), therefore, simply requires compliance with the statutory provisions for reporting to the Ethics Commission.*

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

Commentary

Section 3E requires judges to disqualify themselves in any proceedings in which they have economic interests. See "economic interest" as explained in the Terminology Section. Section 4D requires judges to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; Section 4H requires judges to report compensation they received for activities outside judicial office. Judges have the rights of any other citizens, including the right to privacy of the judges' financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judges' duties.

JUDICIAL DECISIONS

Financial activities.
Judicial misconduct.
Practice of law.

Financial activities.

Where a judge became involved in lease negotiations pertaining to a barge landing site for a county landfill, and advised one party to the lease on the benefits of dealing with the landfill and drafting the lease agreement himself, he violated Canons 1,2A, 2B, 3A(1), 3C, 5C(1) and 5F, as well as §§ 9-1-25 and 23-15-975. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

Where a judge allowed intervention in a will contest by a company that he was assisting in locating a barge landing site for a county landfill, at the same time that he was negotiating with the proponent of the will, and ruled in favor of the company, he violated Canons 1, 2A, 2B, 3A(1), 3A(4), 3C, 3D,5C(1) and 5F. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162 (Miss. 1998).

Justice court judge was fined and publicly reprimanded for using criminal process to collect civil debts, failing to properly docket and process bad checks, failing to properly collect and account for contributions to county law library fund, collecting fees in excess of statutory maximum and paying fees in excess of statutory maximum to court officials, and having a pecuniary interest in the outcome of litigation filed in his court. In re Lambert, 421 So. 2d 1023 (Miss. 1982).

Judicial misconduct.

County justice court judge, who also served as a pastor, had violated Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3A, 3B(1), 3B(2), 3B(7), 3B(8), 3B(11), 3C(1), 3E(1), and 4A, and Miss Const. art. 6, § 177A, where he had contacted an investigator about a prostitution charge against the daughter of a friend and had sua sponte remanded the charge to the file, and had contacted another investigator and inquired about the arrest and pending charges of his parishioner's daughter. In addition to the public remand and $500 fine recommended by the Mississippi Commission on Judicial Performance, the judge was suspended without pay for 30 days. Miss. Comm'n on Judicial Performance v. Sutton, — So. 3d —, 2019 Miss. LEXIS 253 (Miss. July 18, 2019).

Former county justice court judge had violated Miss. Code Jud. Conduct Canons 1, 2A, and 4(a) where he intentionally interfered in a situation with a mentally handicapped individual at a flea market, used bigotry and aggressiveness, and was dressed like a security officer and carried a gun even though he was not hired to provide security. Miss. Comm'n on Judicial Performance v. Weisenberger, 201 So. 3d 444 (Miss. 2016).

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge admittedly gave misleading statements regarding a prior arrest during a newspaper interview while she was serving as a judge, but there was no evidence she acted with the intent of depriving the public of assets or exploiting her position for personal gain, and she had no disciplinary history. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Justice court judge was suspended from office for ninety days without pay and was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2A, 2B, 3B(2), 3B(4), 4A, and Miss. Const. art. 6, § 177A, where the judge engaged in ex parte communications with a female litigant and inappropriately handled a fine reduction. Allegations that the judge made sexual advances toward the female litigant were not established by clear and convincing evidence. Miss. Comm'n on Judicial Performance v. Boone, 60 So. 3d 172 (Miss. 2011).

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 4; the judge blocked the tow truck's travel and attempted to intimidate officers at the scene. Pursuant to Miss. Const. Art. 6, § 177A, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

County justice court judge was publicly reprimanded for violating Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(B)(2), 4(A)(1)-(3) as he ordered that his grandson's driver's license be reinstated (after the grandson pled nolo contendere to DUI) and attempted to have a sheriff allow the grandson to serve his time in a local jail instead of a state facility. Miss. Comm'n on Judicial Performance v. Cole, 932 So. 2d 9 (Miss. 2006).

While acting in an official capacity, judge violated Miss. Const. art. VI, § 177A, Miss. Code Ann. § 9-11-33, and Miss. Code Jud. Conduct Canons 1, 2(A), 2(B), 3(A), 3(B)(2), 3(B)(7), 3(B)(8), 3(C)(1), 3(C)(2), 4(A), and 4(D)(1), by conducting ex parte communications with parties, rendering decisions without giving notice of hearings to parties, and habitually taking civil cases under advisement and failing to render timely decisions; a public reprimand, suspension for 30 days without pay, and payment of the costs of the proceeding was held to be appropriate discipline. Miss. Comm'n on Judicial Performance v. McPhail, 874 So. 2d 441 (Miss. 2004).

Practice of law.

Where a county judge had filed new actions within six months of his appointment after misinterpreting the law in Miss. Code Ann. §§ 9-1-25, 9-9-9, the appellate court held that the judge had not willfully abused the privilege of filing new complaints while in office, and the court adopted the commission's recommendation that the judge be publicly reprimanded and that he be reinstated after his temporary suspension. Miss. Comm'n on Judicial Performance v. Osborne, 876 So. 2d 324 (Miss. 2004).

Judge who served part-time—pro tem as a municipal court judge,and also engaged in private criminal defense practice, received sanction of public reprimand for assuming role of attorney, and presumably accepting a fee, for representing a defendant and attempting to reduce the same bond which he, as city judge, had earlier set for that defendant. Mississippi Comm'n on Judicial Performance v. Atkinson, 645 So. 2d 1331 (Miss. 1994).

ATTORNEY GENERAL OPINIONS

A practicing attorney selected as a special judge for service on the Supreme Court may remain of counsel in all cases presently pending in the state and federal courts. However, pursuant to § 9-1-25 which applies to any judge of the Supreme Court, a special judge may not be engaged in the practice of law and, therefore, may not practice in any of the state courts during his tenure as a special judge. A special judge may, pursuant to the same statute, practice in the federal courts in any case in which he or she was engaged when appointed. Hurst, May, 21, 2004, A.G. Op. 04-0180.

RESEARCH REFERENCES

ALR. Construction and Application of Rule of Necessity in Judicial Actions, Providing that a Judge Is Not Disqualified to Try a Case Because of Personal Interest If Case Cannot Be Heard Otherwise. 27 A.L.R.6th 403.

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

A. All Judges and Candidates

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(2), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions.

Commentary

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit judges or judicial candidate from privately expressing their views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket. However, Sections 23-15-973 et seq., Miss. Code Ann. (1972) impose restrictions on candidates and political organizations to assure the non-partisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges.

(2) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election for a non-judicial office, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary

Although judicial candidates must encourage members of their families to adhere to the same standards of political conduct in support of the candidates that apply to the candidates, family members are free to participate in other political activity. Family members are not prohibited by this subsection from serving on the candidates' campaign committees and otherwise actively involving themselves in the campaigns.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary

Section 5A(3)(d)(i) prohibits a candidate for judicial office making pledges or promises to decide cases in any particular way and statements committing the *candidate with respect to cases, controversies or issues likely to come before the court on which the candidate will serve if elected. This section does not prohibit or limit a candidate's freedom to announce the candidate's current views on issues so long as the announcement does not bind the candidate to maintain those views after election. See Republican Party of Minn. v. White, 536 U.S. 765 (2002) (declaring unconstitutional restrictions in the Minnesota Code of Judicial Conduct on the announcement of views on legal and political issues.) The comparable offending language, referred to as the "announce clause", formerly appeared in our Code of Judicial Conduct, but was removed with the revision of the code on April 4, 2002. This Section does not prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties.*

Section 5A(3)(d)(ii) prohibits a candidate for judicial office making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges and promises respecting improvements in court administration.

Section 5A(3)(d) applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Mississippi Rules of Professional Conduct. Phrases such as "tough on crime," "soft on crime," "pro-business," "anti-business," "pro-life," "pro-choice," or in any similar characterizations suggesting personal views on issues which may come before the courts, when applied to the candidate or an opponent, may be considered to be prohibited by Section 5A(3)(d) only when used in a context which contain a pledge or promise to decide cases in a particular manner. [Commentary amended effective February 26, 2004.]

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) Candidates for appointment to judicial office or judges seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support their candidacies.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office in a political organization,

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other political functions.

Commentary

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election, identify themselves as members of political parties, and contribute to political parties or organizations.

Commentary

Section 5C recognizes the distinction between appropriate political activities by judges and candidates subject to non-partisan election and those subject to partisan elections. The language of Section 5C differs from that of corresponding provisions in the ABA Model Code, Sections C(1)(a)(ii) and (iii), in recognition of Mississippi's non-partisan elections for certain positions. Furthermore, Section 23-15-973 et seq., Miss. Code Ann. (1972) imposes restrictions on candidates and political organizations to assure the non-partisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges. Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity. Section 5C(1)(b)(iv) of the ABA Model Code has not been incorporated. Attending or speaking at a political party gathering in the judge's own behalf while a candidate does not constitute alignments or affiliation with the party sponsoring the gathering.

(2) A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees shall not solicit or accept contributions and public support for the candidate's campaign earlier than 60 days before the qualifying deadline or later than 120 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Commentary

There is legitimate concern about a judge's impartiality when parties whose interests may come before a judge, or the lawyers who represent such parties, are known to have made contributions to the election campaigns of judicial candidates. Section 5C(2) recognizes that in many jurisdictions judicial candidates must raise funds to support their candidacies for election to judicial office. It therefore permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and financial contributions. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may, by virtue of their size or source, raise questions about a judge's impartiality and be cause for disqualification as provided under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Such committees must at all times comply with applicable statutory provisions governing their conduct.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) Candidates shall instruct their campaign committees at the start of the campaign not to accept campaign contributions for any election that exceed those limitations placed on contributions by individuals, political action committees and corporations by law.

Commentary

The ABA Model Code of Judicial Conduct is drafted for the insertion of specific limits on contributions for judicial campaigns. As adopted for Mississippi, this section simply makes references to limits established by the Legislature by statutes which limit contributions to $5,000 in appellate court races, to

$2,500 in chancery, circuit or county court races, and generally limits corporate contributions to $1,000. See Miss. Code Ann. § 23-15-1021 (2000 Supp.) (judicial races) and Miss. Code Ann. § 97-13-15 (1999 Supp.) (corporate contributions.)

(4) A candidate and the candidate's committee shall timely comply with all provisions of law requiring the disclosure and reporting of contributions, loans and extensions of credit.

Commentary

Section 5C(4) of the ABA Model Code of Judicial Conduct which makes special provision for reporting campaign contributions is replaced by the foregoing Section 5C(4) which requires compliance with all provisions of law. See Miss. Code Ann. §§ 23-15-805 and 23-15-1023 (2000 Supp.)

The ABA Model Code includes a Section 5C(5) which approves, under some circumstances, a judicial candidate's name being listed on election materials along with the names of other candidates. This has not been incorporated in the revision of the Mississippi canons.

D. *Incumbent Judges.* A judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

Commentary

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

Sections 5A through 5D limit the participation of judges and candidates in political activities. Section 5D expressly prohibits judges from engaging "in any political activity" not expressly authorized by the Code of Judicial Conduct or by law. These provisions do not prohibit voting in party primaries and general elections, which is not "political activity" as the phrase is used in Canon 5. The statute governing non-partisan judicial elections, while prohibiting candidates for judicial offices covered by the statute from campaigning or qualifying for the offices based on party affiliation, does not preclude the candidates from voting in party primaries. Miss. Code Ann. § 23-25-973 (Supp. 2000.)

E. *Applicability.* Canon 5 generally applies to all incumbent judges and judicial candidates. Successful candidates, whether or not incumbents, are subject to judicial discipline for their campaign conduct; unsuccessful candidates who are lawyers are subject to lawyer discipline for their campaign conduct. Lawyers who are candidates for judicial office are subject to Rule 8.2(b) of the Mississippi Rules of Professional Conduct. However, the provisions of Canon 5F below shall not apply to elections for the offices of justice court judge and municipal judge.

F. *Special Committee--Proceedings and Authority.* In every year in which an election is held for Supreme Court, Court of Appeals, chancery court, circuit court or county court judge in this state and at such other times as the Supreme Court may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The committee shall consist of five (5) members. The Chief Justice of the Supreme Court, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives of the Mississippi Legislature and the chair of the Commission on Judicial Performance (Commission) shall each appoint one member. Those appointed by the Chief Justice, the Governor and the chair of the Commission shall be attorneys licensed to practice in the state. No person shall be appointed to serve as a member of a Special Committee for the year in which such person is a candidate for judicial office. Should the Chief Justice expect to be a candidate for judicial office during the year for which a Special Committee is to be appointed the Chief Justice shall declare such expectation, and in such event, the appointment which otherwise would have been made by the Chief Justice shall be made by the next senior justice of the Supreme Court not seeking judicial office in such year. Likewise, should the Governor, Lieutenant Governor, Speaker of the House of Representatives or chair of the Commission expect to seek judicial office during such year, that official shall declare such expectation, and the appointment which otherwise would have been made by such appointing authority shall be made, respectively: by the Lieutenant Governor if the Governor expects to seek such an office; by the President Pro Tem of the Senate if the Lieutenant Governor expects to seek such an office; by the Speaker Pro Tem of the House of Representatives if the Speaker expects to seek such an office; and by the vice-chair of the Commission if the chair expects to seek such an office. Any action taken by the Special Committee shall require a majority vote. Each Special Committee shall be appointed no later March 1 in the year of their service, and it shall continue in existence for ninety (90) days following such judicial elections or for so long thereafter as is necessary to consider matters submitted to it within such time. The Commission shall provide administrative support to the Special Committee. Should any appointing authority fail to make an appointment, three members shall constitute a sufficient number to conduct the business of the Special Committee. The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(1) Within ten (10) days of the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this state, whichever is later, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address and telephone number, to the

Commission. Upon receipt of such notice, the Special Committee shall, through the Commission, cause to be distributed to all such candidates by certified mail-return receipt requested copies of the following: Canon 5 of the Code of Judicial Conduct; summaries of any previous opinions issued by the Special Committee, Special Committees organized for prior elections, or the Supreme Court of Mississippi, which relate in any way to campaign conduct and practices; and a form acknowledgment, which each candidate shall promptly return to the Commission and therein certify that the candidate has read and understands the materials forwarded and agrees to be bound by such standards during the course of the campaign. A failure to comply with this section shall constitute a per se violation of this Section authorizing the Committee to immediately publicize such failure to all candidates in such race and to all appropriate media outlets. In the event of a question relating to conduct during a judicial campaign, judicial candidates, their campaign organizations, and all independent persons, committees and organizations are encouraged to seek an opinion from the Special Committee before such conduct occurs.

(2) Opinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election and as to the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate, campaign organization or an independent person, committee or organization. If the Special Committee finds the question of limited significance, it may provide an informal opinion to the questioner. If, however, it finds the questions of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Furthermore, the Special Committee may issue formal opinions on its own motion under such circumstances, as it finds appropriate. The Special Committee may decline to issue an opinion when a majority of the Special Committee members determine that it would be inadvisable to respond to the request and to have so confirmed in writing their reasoning to the person who requested the opinion. All formal opinions of the Special Committee shall be filed with the Supreme Court and shall be a matter of public record except for the names of the persons involved, which shall be excised. Both formal and informal opinions shall be advisory only; however, the Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate upon the Special Committee opinion in any disciplinary or enforcement proceeding.

(3) Upon receipt of information facially indicating a violation by a judicial candidate of any provision of Canon 5 during the course of a campaign for judicial office, or indicating actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the same by e-mail or facsimile, if available, and U.S. mail to the Special Committee members and said Committee shall:

(a) seek, from the informing party and/or the subject of the information, such further information on the allegations as it deems necessary;

(b) conduct such additional investigation as the Committee may deem necessary;

(c) determine whether the allegations warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization or independent committee or organization believed to be engaging in unethical and/or unfair campaign practices. If the Committee determines that the unethical and/or unfair campaign practice is of a serious and damaging nature, the Committee may, in its discretion, disregard the issuance of a cease-and-desist request and immediately take action authorized by the provisions of paragraph (3)(d)(i) and (ii), hereafter described. If the allegations of the complaint do not warrant intervention, the Committee shall dismiss the same and so notify the complaining party.

(d) If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:

(i) to immediately release to all appropriate media outlets, as well as the reporting party and the person and/or organization against whom the information is submitted, a public statement setting out the violations believed to exist, or, in the case of independent persons, committees or organizations, the actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5. In the event that the violations or actions have continued after the imposition of the cease and desist request, the media release shall also include a statement that the candidate and/or organization or independent person, committee or organization has failed to honor the cease-and-desist request, and

(ii) to refer the matter to the Commission on Judicial Performance or to any other appropriate regulatory or enforcement authority for such action as may be appropriate under the applicable rules.

(4) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all requests within ten (10) days of receipt, either in person, by facsimile, by U.S. mail, or by telephone. In any event, the Special Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, as to requests received during the last ten (10) days of the campaign, shall act within thirty-six (36) hours.

(5) Except as herein specifically authorized, the proceedings of the Special Committee shall remain confidential, and in no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.

(6) The Committee shall after conclusion of the election distribute to the Commission on Judicial Performance copies of all information and all proceedings relating thereto.

(7) This Canon 5F shall apply to all candidates for judicial offices of the Supreme Court, Court of Appeals, chancery courts, circuit courts and county courts, be they incumbent judges or not, and to the families and campaign/solicitation committees of all such candidates. Persons who seek to have their

name placed on the ballot as candidates for such judicial offices and the judicial candidates' election committee chairpersons, or the chairperson's designee, shall no later than 20 days after the qualifying date for candidates in the year in which they seek to run complete a two-hour course on campaign practices, finance, and ethics sponsored and approved by the Committee. Within ten days of completing the course, candidates shall certify to Committee that they have completed the course and understand fully the requirements of Mississippi law and the Code of Judicial Conduct concerning campaign practices for judicial office. Candidates without opposition are exempt from attending the course.

Commentary

This Section 5F does not appear in the ABA Model Code and was added with the adoption of this Section 5. Similar provisions have been adopted for South Dakota and Georgia. See South Dakota Rules of Commission on Judicial Qualifications, Rule IV and Rules of Georgia Judicial Qualification Commission, Rule 27. In Weaver v. Bonner, 114 F. Supp. 2d 1337 (N.D. Ga. 2000), a constitutional challenge to the Georgia rule was rejected, the court saying the government may "participate in the marketplace of ideas" and "contribute its own views to those of the other speakers. Weaver at 1345, quoting Muir v. Ala. Educ. Television Comm'n, 688 F. 2d 1033, 1037 (5th Cir. 1982). In Weaver, the court also specifically found the procedures adequate to satisfy due process requirement.

Provision is made for the Special Committee to issue opinions to judicial candidates. Ordinarily, absent extraordinary circumstances or statutory authority to the contrary, when a judge or candidate, relying on the opinion of the Special Committee, acts in accordance with the opinion and the opinion is based on a full disclosure of facts and circumstances, the judge or candidate will not be subject to disciplinary or enforcement action or liability.

JUDICIAL DECISIONS

Campaign conduct.
Candidate for nonjudicial office.
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Campaign conduct.

Trial court correctly granted summary judgment in favor of a judge in a candidate's election contest because the candidate failed to produce any evidence that the judge previewed and approved a "Sample Official Democratic Election Ballot"; the judge refuted the candidate's claim that the judge requested or instructed the friends a representative of the Mississippi Second United States Congressional District to place her name on the sample democratic ballots of which the candidate complained. James v. Westbrooks, — So. 3d —, 2019 Miss. LEXIS 177 (Miss. Apr. 25, 2019).

Municipal court judge was publicly reprimanded because she committed judicial misconduct and conduct prejudicial to the administration of justice; the judge admitted to violating the Canon by publicly endorsing a political candidate, but there was no evidence that she committed any of the conduct with the intent of depriving the public of assets or exploiting her position for personal gain, she had no disciplinary history, and she fully cooperated with the investigation of the matter. Miss. Comm'n on Judicial Performance v. Clinkscales, 192 So. 3d 997 (Miss. 2016).

Judge did not act as a leader for, or held an office in, the voters league, in violation of Miss. Code Jud. Conduct Canon

5A(1)(a), and there was no indication that the judge was making a speech on behalf of the Voters League, as prohibited by § 5A(1)(b); the record evinced only that the judge was there as a judicial candidate running for reelection, and Miss. Code Jud. Conduct Canon 5C(1) expressly permitted incumbent judges to attend and speak to political gatherings on their own behalf while candidates for election or re-election. Miss. Comm'n on Judicial Performance v. Osborne, — So. 2d —, 2009 Miss. LEXIS 9 (Miss. Feb. 5, 2009), opinion withdrawn by, substituted opinion at 11 So. 3d 107, 2009 Miss. LEXIS 278 (Miss. June 18, 2009).

Alleged violation of the Mississippi Canons of Judicial Conduct is not cognizable as a cause of action before the Mississippi trial courts, but rather must be pursued through the Mississippi Commission on Judicial Performance or the Mississippi Special Committee on Judicial Election Campaign Intervention; therefore, a temporary restraining order was dissolved where it was based on a judicial candidate allegedly making false statements during a campaign because a chancery court had no jurisdiction to hear such. In re Bell, 962 So. 2d 537 (Miss. 2007).

Under the circumstances, chancellor who called an individual involved in litigation pending before him, and who solicited that individual's political support in the chancellor's campaign for reelection, was subject to private, not public, reprimand. In re Baker, 535 So. 2d 47 (Miss. 1988).

Candidate for nonjudicial office.

Municipal court judge was publicly reprimanded and fined $4,932.68 for failing to resign as municipal judge while running for a nonjudicial office. Mississippi Comm'n on Judicial Performance v. Haltom, 681 So. 2d 1332 (Miss. 1996).

Judge who qualified to run for nonjudicial office of circuit clerk without resigning from his judicial office of justice court judge violated subdivision A(3) of this canon, warranting public reprimand and fine of $5,600. Mississippi Comm'n on Judicial Performance v. Ishee, 627 So. 2d 283 (Miss. 1993).

Justice court judge violated this canon by engaging in political activities over an extended period, particularly by continuing to serve on county executive committee of Democratic Party after being elected to judicial office. Mississippi Judicial Performance Comm'n v. Peyton, 555 So. 2d 1036 (Miss. 1990).

Personal conduct.

There was no evidence in the record that the judge acted as a leader for, or held an office in, a voters league, in violation of section Miss. Code Jud. Conduct Canon 5(A)(1)(a); likewise, there was no indication that the judge was making a speech on behalf of the voters league, as prohibited by Canon 5(A)(1)(b). Additionally, although the judge admittedly attended political gathering, ordinarily a violation under Canon 5(A)(1)(c), the record evinced only that he was there as a judicial candidate running for reelection; Canon 5(C)(1) expressly permitted incumbent judges to attend and speak to political gatherings on their own behalf while candidates for election or reelection. Miss. Comm'n on Judicial Performance v. Osborne, 11 So. 3d 107 (Miss. 2009).

Judge was publicly reprimanded, assessed costs of proceedings, and fined after he and a woman wrote over $ 330,000 in bad checks for a house and motor vehicles, violating Miss. Code Jud. Conduct Canon 5C(1), because any economic injury suffered by the businesses visited by the judge and the woman had been repaid. Although writing checks for insufficient funds was reprehensible conduct for a judge, usually it had to be in conjunction with some other inappropriate act or acts before warranting removal. Miss. Comm'n on Judicial Performance v. Hartzog, 904 So. 2d 981 (Miss. 2004).

Procedure.

While mayor of code charter municipality may have obligation to file formal complaint with Judicial Performance Commission for a judge's political party participation, mayor does not have authority to suspend a properly appointed judge from serving on the bench. Scott v. Stater, 707 So. 2d 182 (Miss. 1997).

ATTORNEY GENERAL OPINIONS

A campaign committee may receive contributions after 90 days following the election of a Justice of the Mississippi Supreme Court; however, it may not solicit funds after 90 days following the election. Easley, Jr., Feb. 1, 2001, A.G. Op. #2001-0044.

RESEARCH REFERENCES

Law Reviews — Payne, Mississippi Judicial Elections: A Problem Without a Solution? 67 Miss. L.J. 1, Fall, 1997.

Walk Before They Make Us Run: Republican Party of Minnesota v. White and the Need for Judicial Reform in Mississippi, 23 Miss. C. L. Rev. 51, Fall, 2003.

Suppressing Speech in Judicial Elections: How the Canons of Judicial Ethics Abridge the Freedom of Speech of Judges and Candidates for Judicial Office, 21 Miss. C. L. Rev. 267, Spring, 2002.

Application of the Code of Judicial Conduct.

A. *Parties Affected.* Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

B. *Part-time Judge.* A part time judge shall not be subject to the restrictions and limitations of Sections 4C, 4D(2), 4F, and 4G, except as regards practice in the court in which the part-time judge serves [prohibition on practice of law], and 4H(1).

C. *Special Judge.* A special judge shall not, except while serving as a judge, be subject to the restrictions and limitations of Sections 4A. A special judge shall not, at any time be subject to the restrictions and limitations of Sections, 4B, 4D, 4E, 4F, 4G, and 4H. A special judge, except while serving as a special judge or while a candidate for judicial office, shall not be subject to the restrictions of Canon 5.

D. Magistrates, court commissioners, special masters and referees shall not at any time be subject to the restrictions and limitations of Sections 4A, 4B, 4C(1), 4C(2) 4D, 4E, 4F, 4G, and 4H. Magistrates, court commissioners, special masters and referees, except while a candidate for judicial office, shall not be subject to the restrictions of Canon 5.

E. *Time for Compliance.* A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Sections 4D(1), 4D(2) and 4E and shall comply with those Sections as soon as reasonably possible and shall do so in any event within the period of one year.

F. *Effective Date.* The separate provisions of this Code shall govern acts, events and conduct of those subject to those provisions from and after the effective date of the adoption of each such provision. Acts, events and conduct which occur prior to the adoption of each provision shall be governed by the provisions of the Code effective at the time of such acts, events and conduct.

Commentary

The ABA Model Code of Judicial Conduct provides for several non-standard categories of judges who perform duties on a limited basis, which differ from those recognized for Mississippi by this Applications Section. If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Section 4E, continue to serve as a fiduciary but only for that period of time necessary to avoid serious adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Section 4D(2), continue in that activity for a reasonable period but in no event longer than one year.

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7. Interim suspension of judge.
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9. Mental or physical disability.
10. Supreme Court review.
11. Charges against Justice of the Supreme Court.

Cross References — Commission on Judicial Performance, see Mississippi Code of 1972 § 9-19-1 et seq.

RESEARCH REFERENCES

Practice References. Geyh, Alfini, Lubet, Shaman, Judicial Conduct and Ethics, Fifth Edition (Michie).

Shepard's Professional and Judicial Conduct Citations (Shepard's).

Rule 1. General.

A. *Definitions.* In these rules, unless the context or subject matter otherwise requires:

(1) "Commission" means the Mississippi Commission on Judicial Performance.

(2) "Supreme Court" means the Mississippi Supreme Court.

(3) "Judge" means a Justice of the Supreme Court or a judge of the Court of Appeals, Circuit Court, Chancery Court, County Court, Family Court, Justice Court, Municipal Court, and all other courts in existence in Mississippi, including someone serving as a part-time judge, special judge or a judge in senior status. Reference to "the judge" shall mean any judge whose conduct or mental or physical condition is under consideration.

(4) "Chairman" means the chairman of the Commission or the vice-chairman when serving as chairman.

(5) "Member" means a member of the Commission or an alternate member serving in the place of a member of the Commission.

(6) "Shall" is mandatory and "may" is permissive.

(7) The masculine gender includes the feminine gender.

B. *Purpose.* The Commission was created in 1979 by the Mississippi Legislature and the voters of the State of Mississippi by constitutional amendment. The Commission shall enforce the standards of judicial conduct, inquire into judicial disability and conduct, protect the public from judicial misconduct and disabled judges, and protect the judiciary from unfounded allegations. All proceedings before the Commission shall be of a civil nature, not criminal, as the purpose of the Commission is to be rehabilitative and educational as well as disciplinary.

C. *Construction of rules.* These rules shall be liberally interpreted so as to carry out the mandate of the electorate by its approval of Section 177A of the Mississippi Constitution of 1890.

JUDICIAL DECISIONS

Definitions.

Respondent was a "judge", within contemplation of both rules of Judicial Performance Commission and Code of Judicial Conduct, by virtue of his role as judge pro tempore of town municipal court. Mississippi Judicial Performance Comm'n v. Thomas, 549 So. 2d 962 (Miss. 1989).

Rule 2. Jurisdiction.

The Commission shall consider conduct of a judge or the physical or mental condition of a judge. In the absence of fraud, corrupt motive, or bad faith, the Commission shall not consider allegations against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. The Commission may consider allegations against a judge regarding any conduct prior to January 1, 1980, where such prior conduct relates to the judge's ability to serve, brings discredit to the judiciary, or adversely affects the administration of justice. Notwithstanding that a judge has resigned his office, the Commission shall retain jurisdiction over that judge if prior to his resignation the Commission has initiated an inquiry into the conduct of the judge.

JUDICIAL DECISIONS

Bad faith.
Jurisdiction.

Bad faith.

Circuit judge should have been aware that he exceeded his authority in ordering the post-sentence release of four state prisoners; there was therefore ample evidence of bad faith satisfying jurisdictional requirement of this rule. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Jurisdiction.

Mississippi Commission on Judicial Performance had jurisdiction over a proceeding charging a judge for failing to properly adjudicate criminal matters, and engaging in ticket-fixing, in exchange for simultaneous payments to a "drug fund" established and maintained by the town police chief: the misconduct complained of did not need to be intentional or notorious. Rather negligence, ignorance, and incompetence suffice as grounds for behavior to be classified as prejudicial to the administration of justice which brings the judicial office into disrepute and thus worthy of sanctions. Miss. Comm'n on Judicial Performance v. Smith, 109 So. 3d 95 (Miss. 2013).

Rule 3. Organization.

A. *Membership and terms.* The membership of the Commission shall be as prescribed in Section 177A of the Mississippi Constitution of 1890 for such terms as prescribed by general law.

B. *Vacancies.* When a judge ceases to be a judge of the court from which he was appointed or whenever any member becomes otherwise ineligible to hold office, his membership shall terminate. The Chairman shall promptly notify the appointing authority of the vacancy. The appropriate alternate member shall serve as a temporary replacement until such time as the appointing authority shall duly certify to the Commission a replacement member for the remainder of the unexpired term. An alternate member appointed to fill an unexpired term shall be eligible for an appointment for a full term. If a member who is a judge becomes a respondent to a formal complaint under Rule 6 before the Commission, that member shall be disqualified from attending meetings and shall not perform any Commission duties until the formal complaint is finally disposed of. The appointing authority shall be notified and shall appoint another alternate member to serve during the term of disability or disqualification. A formal complaint against a member shall be given highest priority on the Commission's docket and shall be brought to a conclusion expeditiously unless waived by the member.

C. *Alternate members.* An alternate member shall serve in the place of a member of the same category whenever such member is absent, disqualified, unwilling or unable to serve.

D. *Disqualification.* A member shall be disqualified to serve in any inquiry or complaint when (1) he is related to the judge or complainant by affinity or consanguinity, (2) the judge is a resident of his county, or (3) the member has personal knowledge or information which could interfere with the member impartially considering such matter.

A member may voluntarily disqualify himself when (1) the member resides in the judge's judicial district; or (2) upon a showing of good cause, the Commission approves the member's request for voluntary disqualification.

E. *Officers.* A Chairman and Vice-Chairman shall be elected each year at the January meeting to serve from January 1 through December 31 of such year. The Vice-Chairman shall perform the duties of the Chairman whenever he is absent or unable to act.

F. *Executive director.* The Commission shall appoint a member of the Mississippi State Bar as executive director to serve at its pleasure. He shall neither engage in the private practice of law nor serve in any judicial capacity.

The Commission shall prescribe the duties and responsibilities of the executive director, which may include the authority to:

(1) Receive information from any proper source, including allegations and complaints;

(2) Make preliminary evaluations;

(3) Screen complaints and make recommendations to the Commission;

(4) Conduct and/or supervise investigations as directed by the Commission;

(5) Maintain and preserve in confidentiality the Commission's records, including all complaints, files and written dispositions;

(6) Maintain statistics concerning the operations of the Commission and make them available to the Commission and to the Supreme Court;

(7) Prepare the Commission's budget for its approval and administer its funds;

(8) Recommend employment and supervise other members of the Commission's staff;

(9) Prepare an annual report of the Commission's activities;

(10) Employ, upon the direction of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court;

(11) Represent the Commission as counsel in formal proceedings and in other proceedings, upon the direction of the Commission; and

(12) Represent the Commission at conferences, seminars, and other educational functions.

G. *Meetings.* The Commission shall meet at least monthly at announced dates and places, except when there is no business to be conducted. Meetings shall be called by the Chairman or upon the written request of two (2) members.

H. *Quorum; voting requirements.* Four members (or their alternates) shall constitute a quorum for the transaction of all Commission business. Commission business may be decided by a majority vote of the members present. A two-thirds (2/3) vote of the Commission shall be required for any action pertaining to its disciplinary authority.

I. *Rules and forms.* These rules shall control complaints to, investigations by, and proceedings by the Commission. The Commission may, for good cause, suspend any or all of its rules upon a two-thirds (2/3) vote of the Commission. The Commission shall prescribe such forms as it deems appropriate.

J. *Commission office.* The Commission shall establish a permanent office, in a building approved by the Capitol Commission, which shall be open to the public at regular announced hours.

K. *Finances.* The expenses of the Commission shall be authorized to be paid in accordance with the approved Commission budget and in compliance with applicable procedures established by the Auditor of Public Accounts. In the event of an unanticipated funding shortage, the Commission shall not curtail the discharge of its constitutionally mandated operations, but shall authorize the executive director to seek a deficit appropriation to fund the Commission's operations. (Amended effective June 29, 1995; amended January 9, 1998.)

Rule 4. Confidentiality.

A. *All proceedings.* All proceedings before the Commission shall be confidential, except upon unanimous vote of the Commission, as prescribed in Section 177A of the Mississippi Constitution of 1890. Confidentiality shall attach upon the initiation of an inquiry and shall include all records, files and reports of the Commission. All proceedings before the Supreme Court and any final decisions made by the Supreme Court shall be made public as in other cases at law. However, an appeal from a private admonishment by the Commission shall be confidential unless on appeal the Supreme Court imposes sanctions harsher than the private admonishment.

B. *Disclosure.* By unanimous vote, the Commission may waive confidentiality and disclose such information deemed appropriate by the Commission. Such action may be taken upon the Commission's own motion or upon written request of the judge.

C. *Violation by staff.* Employment of the executive director or any member of the staff may be terminated for violation of confidentiality. (Amended March 7, 2002.)

COMMENT

Proceedings before the Commission and the Court in matters of judicial discipline are governed by Section 177A of the Mississippi Constitution. Generally, unless the Commission unanimously votes to make its proceedings public, they remain confidential. However, except in the case of an appeal by a judge of a private admonishment issued by the Commission against that judge, and in cases where the Court expressly seals the record following a private reprimand issued by the Court after the Commission has filed recommendations for more severe sanctions, proceedings before the Court and decisions of the Court are public.

Rule 5. Procedures of commission.

A. *Initiation of inquiry.* Upon receipt of proper information regarding a judge's conduct or physical or mental condition, the Commission shall initiate a confidential inquiry to determine whether the matter is within the Commission's jurisdiction. On its own motion, the Commission may make inquiry concerning a judge's conduct or physical or mental condition, and may file a formal complaint based upon the results of such inquiry on its own motion.

B. *Preliminary inquiry.* Upon receipt of such information, the executive director shall make a prompt, discreet, and confidential preliminary inquiry and evaluation under guidelines approved by the Commission. The executive director shall then make a report to the Commission.

After such report, the Commission shall dismiss complaints which are not within the Commission's jurisdiction, relate only to claimed errors of law or fact, or are unfounded. The complainant shall be informed in writing of the Commission's action.

C. *Notice to judge.* The Commission shall not notify a judge of any initial complaint dismissed after preliminary inquiry, unless otherwise determined by the Commission.

When the initial complaint is not dismissed, within ninety (90) days of its receipt the judge shall be notified of the investigation and nature of the charge. Failure to make timely notification shall not be Founds for dismissal of any investigation or proceeding. Such notice shall be in writing and may be transmitted by a member of the Commission, the executive director, any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

When a judge has been notified of an investigation and the Commission has dismissed the matter, the judge shall be so notified and the file shall be closed.

D. *Sworn complaint or statement in lieu of complaint.* If the initial complaint is not dismissed, the complainant shall be asked to file a detailed, signed, sworn complaint against the judge. The sworn complaint shall state the names and addresses of the complainant and the judge, the facts constituting the alleged misconduct, and, so far as is known, whether the same or a similar complaint by the complainant against the judge has ever been made to the Commission. A sworn complaint may be waived by a two-thirds (2/3) vote of the Commission; a sworn complaint shall not be required in an inquiry initiated by the Commission on its own motion.

E. *Informal conference.* The Commission may request the judge to attend an informal conference concerning the matters relating to his judicial performance.

F. *Right to counsel.* At all stages of the Commission's proceedings, the judge shall be entitled to counsel.

G. *Subpoena.* The subpoena power granted the Commission by law shall apply at any stage of the investigation or any proceedings. The judge shall be entitled to subpoenae for any formal hearing. All subpoenae shall be on the form prescribed by the Commission, and the Commission shall have the power to enforce process.

H. *Earwigging prohibited.* No person shall discuss or attempt to discuss with or in the presence or hearing of a member anything concerning an inquiry or proceeding then pending with or likely to be considered by the Commission, except in accordance with these rules. Any person knowingly violating this or any other rule of the Commission may be guilty of contempt.

JUDICIAL DECISIONS

Constitutionality.
Evidence.

Constitutionality.

Combination of investigative, prosecutorial, and adjudicatory functions in Commission on Judicial Performance does not violate due process. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Evidence.

Evidence was insufficient to show that the Commission on Judicial Performance violated the rule, notwithstanding evidence of two newspaper clippings in a county newspaper pertaining to the alleged charges against the judge and a closed hearing near the time of trial since there was no evidence that the commission was responsible for the disclosures. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Rule 6. Probable cause.

A. *Grounds for discipline and retirement.* The grounds for discipline and retirement, as prescribed by the Constitution, are:

(1) Actual conviction of a felony in a court other than a court of the State of Mississippi;

(2) Willful misconduct in office;

(3) Willful and persistent failure to perform his duties;

(4) Habitual intemperance in the use of alcohol or other drugs;

(5) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute;

(6) Physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character.

(7) Any willful violation of law constituting a serious misdemeanor or felony;

(8) Any violation of the code of judicial conduct; and

(9) Any violation of the rules of professional conduct as adopted by the Supreme Court.

B. *Disposition.* The Commission shall dispose of the case in one (1) of the following ways:

(1) If it finds that there has been no misconduct, the case shall be dismissed.

(2) If it fails to find grounds for discipline under Section 177A of the Mississippi Constitution, but nevertheless finds that there has been conduct for which a private admonishment constitutes an adequate response, it shall issue the admonishment. The complainant shall be notified that the matter has been resolved. The Commission shall notify the Chief Justice of the Supreme Court of its action.

(3) The Commission may enter into a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling.

(4) If it is determined that probable cause exists to require a formal hearing, it shall so notify the judge by service of a notice and a formal complaint.

C. *Formal complaint.* The formal complaint shall be entitled "BEFORE THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE, INQUIRY CONCERNING A JUDGE, NO. ________." The formal complaint shall identify any complainant and shall specify in ordinary and concise language the charges against the judge. The notice shall advise the judge of his right to file a written, sworn answer to the charges against him within thirty (30) days after service of the notice upon him. The notice and formal complaint shall be served upon the judge by personal service by a member of the Commission, the executive director, or by any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

D. *Answer.* Within thirty (30) days after service of the notice and the formal complaint, the judge may file with the Commission a sworn answer or motions. The formal complaint and answer shall constitute the pleadings. Thereafter, no further motions or pleadings may be filed unless the Commission shall first grant leave. (Amended effective June 29, 1995; amended April 4, 2002; amended effective March 19, 2015.)

JUDICIAL DECISIONS

Removal from office.

Motion to dismiss order of interim suspension filed by the Mississippi Commission on Judicial Performance was dismissed as moot and a circuit court judge was removed from office because the Commission exceeded its authority under Miss. Const. art. 6, § 177A since the supreme court had neither been presented with nor asked to approve any agreement between the Commission and a circuit court judge; the supreme court could not allow the dismissal of formal complaints in two separate cases pursuant to the circuit court judge's resignation or any mere agreement not to seek judicial office in the future, and based upon the seriousness of the circuit court judge's admitted criminal acts and judicial misconduct, he was removed from office. Miss. Comm'n on Judicial Performance v. DeLaughter, 29 So. 3d 750 (Miss. 2010).

Rule 7. Interim suspension of judge.

Upon the filing of a formal complaint, the Commission may, in its discretion, issue its order directed to the judge to show good cause before the Commission why the Commission should not recommend to the Supreme Court that he be suspended from office while the inquiry is pending. The order to show cause shall be returnable before the Commission at a designated place and at a time certain, at which place and time the Commission shall consider the question of suspension. Either after issuing its order to show cause or without such order to show cause, the Commission may recommend to the Supreme Court that the judge be suspended from performing the duties of his office, pending final determination of the inquiry. If the Commission recommends suspension, such recommendation and a transcript of all proceeding of the Commission shall be immediately forwarded to the Clerk of the Supreme Court. An interim suspension shall not preclude further action by the Commission.

Rule 8. Formal hearing.

A. *Scheduling of hearing.* The Commission shall schedule a formal hearing concerning the charges. The hearing shall be held no sooner than five (5) days after filing of an answer or after the deadline for filing of the answer if no answer is filed. Notice of the hearing shall be sent to the judge at his last known residence of record or to his attorney.

At the date set for the formal hearing, the hearing shall proceed whether or not the judge has filed an answer, and whether or not he appears in person or through counsel. The failure of the judge to answer or appear may be taken as evidence of the facts alleged in the formal complaint.

B. *Discovery and procedure.* In all formal proceedings the Mississippi Rules of Civil Procedure shall be applicable except as otherwise provided in these rules. The sole parties to formal proceedings shall be the Commission and the judge.

C. *Fact finder.* The formal hearing shall be conducted before the entire Commission or before a committee of the Commission, a master or a Fact finder designated by the Commission.

D. *Conduct of hearing.* Facts requiring action of the Commission shall be established by clear and convincing evidence.

The Mississippi Rules of Evidence shall apply to any formal hearing. All witnesses shall take an oath or affirmation to tell the truth. All Commission members, staff, witnesses, counsel, or any other person privy to any hearing before the Commission shall take an oath of secrecy concerning all proceedings before the Commission, violation of which shall be punishable as contempt.

The Commission shall employ a member of the Mississippi State Bar to prepare and present the formal complaint to the Commission and otherwise act as counsel and to represent the Commission before the Supreme Court or direct the Executive Director to so represent the Commission as counsel.

The Commission shall designate one (1) of its judicial or attorney members to preside over each formal hearing. He shall dispose of all preliminary matters and shall rule on procedural and evidentiary matters during the course of the hearing.

The judge shall have the right to present evidence and to produce and cross-examine witnesses.

The judge shall be limited to two (2) character witnesses who may testify at the formal hearing; he may submit the affidavits of any other character witnesses he deems appropriate.

The hearing shall be recorded by a reporter employed by the Commission.

E. *Determination.* If the full Commission has held the formal hearing, it shall promptly prepare its findings of fact and any recommendations.

When a committee, master, or Fact finder has held the formal hearing, its findings of fact and recommendations shall be filed with the Commission within thirty (30) days after the hearing's conclusion; provided, however, the Commission may grant additional time for the preparation of such findings and recommendations. The executive director shall promptly deliver to the judge or his legal representative and to the Commission counsel a copy of the transcript of the proceedings and a copy of the findings and recommendations. Within ten (10) days from receipt of such copies, the judge and Commission counsel may submit written objections to the findings and recommendations. The Commission shall review the findings and recommendations, the written objections, and the transcript; and it may accept, modify, or reject, in whole or in part, the findings and recommendations and may make additional findings of fact and recommendations.

F. *Commission recommendation.* The Commission recommendations to the Supreme Court for discipline may include removal from office, suspension, fine, public censure or reprimand, or retirement. In addition, the Commission may privately admonish a judge as provided by law.

The Commission findings and recommendation and the numerical vote shall be recorded; all other Commission action shall remain confidential.

G. *Dissent.* If any member dissents from a recommendation as to discipline or retirement, the dissenting recommendation shall also be transmitted to the Supreme Court. Only the dissent, with the number of dissenters shall be transmitted; the names of the individual dissenters shall remain confidential.

H. *No discipline recommended.* If two-thirds (2/3) of the members of the Commission fail to recommend discipline or retirement, the case shall be dismissed.

I. *Witness fees.* All witnesses shall receive fees and expenses in the statutorily allowable amount. Expenses of witnesses shall be borne by the party calling them. When the physical or mental disability of the judge is in issue, the Commission may reimburse the judge for the reasonable fees of any physician rendering a report or testifying at a Commission hearing. If the judge is exonerated of the charges against him and the Commission determines that the imposition of cost and expert witness fees would work a financial hardship or injustice upon him, the Commission may order that part or all of those cost and fees be reimbursed.

COMMENT

Disciplinary recommendations to the Supreme Court by the Commission under Rule 8(F) may range from removal from office down to public censure or reprimand. Although the Commission generally does not impose disciplinary sanctions, but rather makes findings and recommendations for submission to the Supreme Court, it may, under Rule 6, dismiss cases or impose the lesser sanction of a private admonishment, without action by the Supreme Court. In the case of private admonishment, the Commission will notify the Chief Justice of the Supreme Court of its action.

[Comment adopted March 7, 2002.]

JUDICIAL DECISIONS

Constitutionality.
Evidence.
Time limits.

Constitutionality.

Combination of investigative, prosecutorial, and adjudicatory functions in Commission on Judicial Performance does not violate due process. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Evidence.

Mississippi Commission on Judicial Performance did not err by excluding three witnesses' testimony where the judge had more than two character witnesses testify on her behalf and the testimony from the three witnesses amounted to character testimony, which was duplicative of that of other character witnesses who testified on the judge's behalf. Miss. Comm'n on Judicial Performance v. Boland, 975 So. 2d 882 (Miss. 2008).

A technical violation of the rule did not require that the findings of fact and conclusions of law be stricken, given the voluminous record, the length of the hearing, the number of witnesses, and the fact that the judge's attorney also requested additional time even after the commission had set a deadline for submission. Mississippi Comm'n on Judicial Performance v. Spencer, 725 So. 2d 171 (Miss. 1998).

Time limits.

Rules of Commission on Judicial Performance did not set forth a statute of limitations for judicial performance cases, and thus charges against circuit judge were not time-barred; three-year statute of limitations utilized in attorney discipline cases was not applied. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Rule 9. Mental or physical disability.

When the mental or physical health of a judge is in issue, the Commission may request the judge either (1) to submit to examinations by licensed physicians chosen and paid by the Commission, or (2) to submit to the Commission all reports of recent examinations by licensed physicians relating to the alleged condition. If the judge fails to submit to the examinations or to submit all recent medical reports, such failure shall raise an adverse inference to the judge on such issue, unless the judge's failure was due to circumstances beyond his control. The judge shall be furnished a copy of the report of any examination conducted under this rule.

Rule 10. Supreme Court review.

A. *Filing and service.* The Commission shall promptly file the record, its findings and recommendations, and any dissents with the Clerk of the Supreme Court and shall immediately serve copies thereof upon the judge.

B. *Procedure.* The Mississippi Rules of Appellate Procedure shall be applicable for all Commission proceedings before the Supreme Court, except as otherwise provided in these rules.

C. *Preference cases.* The Supreme Court shall treat all Commission matters as preference cases, to be determined with reasonable expedition.

D. *Briefs.* When the Commission has recommended the interim suspension of a judge, the Commission, as petitioner, and the judge, as respondent, shall file simultaneous briefs with the Supreme Court within seven (7) days after the filing of the Commission's recommendations with the Clerk of the Supreme Court. No reply briefs shall be filed.

In other cases the Commission, as petitioner, and the judge, as respondent, shall file simultaneous briefs with the Supreme Court within thirty (30) days after the filing of the Commission's recommendations with the Clerk of the Supreme Court. No reply briefs shall be filed.

E. *Decision.* Based upon a review of the entire record, the Supreme Court shall prepare and publish a written opinion and judgment directing such disciplinary action, if any, as it finds just and proper. The Supreme Court may accept, reject, or modify, in whole or in part, the findings and recommendation of the Commission. In the event that more than one (1) recommendation for discipline of the judge is filed, the Supreme Court may render a single decision or impose a single sanction with respect to all recommendations.

F. *Private admonishments.* If a judge desires to appeal a private admonishment, he shall file a notice of appeal with the Commission within thirty (30) days from the issuance of such admonishment. The Commission shall promptly file with the Clerk of the Supreme Court the record and its admonishment. The judge shall be the appellant and the Commission the appellee.

An appeal from a private admonishment issued by the Commission shall follow the same procedures as other Commission matters except that such appeal shall remain confidential, as provided by law.

JUDICIAL DECISIONS

Assessment of costs.
Decisions.
Scope of review.
Standard of review.

Illustrative cases.

Assessment of costs.

Assessment of the costs of the Mississippi Commission on Judicial Performance's first inquiry, which the judge contested, was within the Mississippi Supreme Court's discretion and was reasonable because the judge was on notice that such costs were being sought and because his behavior was the reason the costs were incurred; but as he never contested his suspension under a second inquiry, there was no basis to award costs for that inquiry. Miss. Comm'n on Judicial Performance v. Teel, 863 So. 2d 973 (Miss. 2004).

An assessment of costs is within the discretion of the court, is in keeping with the precedent of the court, and is reasonable where the complaining party is on notice that such costs are being sought and where the behavior of the complaining party is the reason for the incurring of the costs. Mississippi Comm'n on Judicial Performance v. Russell, 724 So. 2d 873 (Miss. 1998).

Decisions.

Supreme court did not lack authority to remove judge absent a recommendation for such removal from judicial performance commission; having acquired jurisdiction, supreme court had full jurisdiction to increase or diminish sanctions based upon its review of record made before commission. In re Collins, 524 So. 2d 553 (Miss. 1987).

Scope of review.

Power to impose sanctions is delegated solely to supreme court; court therefore has an obligation to conduct an independent inquiry of the record in order to make a final determination of appropriate action to be applied, and in so doing, court will accord careful consideration to findings of fact and recommendations of judicial performance commission, or its committee, which has had opportunity to observe demeanor of witnesses. In re Anderson, 412 So. 2d 743 (Miss. 1982).

Standard of review.

Supreme court conducts de novo review of judicial misconduct proceedings, giving great deference to findings, based on clear and convincing evidence, of recommendations of Judicial Performance Commission; although court considers recommendations of commission, it is in no way bound by them and may also impose additional sanctions. Mississippi Comm'n on Judicial Performance v. Russell, 691 So. 2d 929 (Miss. 1997), reh'g denied, 693 So. 2d 384 (Miss. 1997).

Although supreme court is not bound by findings of Commission on Judicial Performance, they are given great deference when based on clear and convincing evidence. Mississippi Comm'n on Judicial Performance v. Dodds, 680 So. 2d 180 (Miss. 1996).

Supreme court in a judicial disciplinary proceeding is not bound by limited scope-of-review rules applicable in appeals generally; however, court gives great deference to findings of fact which are based on clear and convincing evidence. Mississippi Judicial Performance Comm'n v. Hopkins, 590 So. 2d 857 (Miss. 1991).

Illustrative cases.

Judge was publicly reprimanded and suspended for thirty days pursuant to Miss. Jud. Perf. Comm'n R. 10(E) because the judge's racially disparaging language on three occasions, although used in private settings, reflected negatively on the judicial office and could give the appearance of an inability to render race-neutral decisions. Miss. Comm'n on Judicial Performance v. Brown, 37 So. 3d 14 (Miss. 2010).

Where a judge breached the peace during the repossession of an automobile jointly owned by the judge's wife and mother-in-law, his conduct violated Miss. Code Jud. Conduct Canon 1. Pursuant to Miss. Jud. Perf. Comm'n R. 10, the Supreme Court of Mississippi suspended the judge for 180 days without compensation. Miss. Comm'n on Judicial Performance v. Osborne, 977 So. 2d 314 (Miss. 2008).

Former judge's failure to pay office-related charges to vendors after being reimbursed for such charges by the State was willful misconduct prejudicial to the administration of justice which brought the judicial office into disrepute, and he was publicly reprimanded as recommended by the Mississippi Commission on Judicial Performance. Miss. Comm'n on Judicial

Performance v. Teel, 863 So. 2d 973 (Miss. 2004).

Recommendation for a public reprimand was not adopted since it was too lenient for a judge who committed willful misconduct under Miss. Const. Art. 6, § 177A by violating Miss. Code Jud. Conduct Canons 1, 2A, 3B(2), 3B(7), 3B(8), and 3C(1) when he engaged in improper ex parte communications; moreover, he ignored Miss. Code Ann. § 9-11-33 and Miss. Unif. R. P. J. Ct. 2.06 when he set aside a final judgment and interfered with orders handed down by another judge. Miss. Comm'n on Judicial Performance v. Britton, 936 So. 2d 898 (Miss. 2006).

The Supreme Court adopted the Commission's recommendation as to the public reprimand and assessment of court costs, but rejected the Commission's recommendation of a fine. Mississippi Comm'n on Judicial Performance v. Sanders, 749 So. 2d 1062 (Miss. 1999).

Rule 11. Charges against Justice of the Supreme Court.

Charges against a Justice of the Supreme Court shall proceed in the same manner as charges against any other judge except that, upon the filing of the report and recommendation of the Commission, a special tribunal shall be empaneled as provided by Section 177A of the Mississippi Constitution of 1890. Upon recommendation by the Commission for discipline or retirement of a Justice of the Supreme Court, the executive director shall notify the Secretary of State to select the tribunal in accordance with the procedures established in the Constitution. In the event a judge selected for the tribunal is disqualified or otherwise unable to serve, such judge shall file a notice of recusal with the Clerk of the Supreme Court within ten (10) days. The Clerk of the Supreme Court shall notify the Secretary of State and another member shall be selected in the manner provided by the constitution. When seven (7) qualified members have been selected the tribunal shall, within ten (10) days, meet and select one of its members as the presiding member of the tribunal. The tribunal shall proceed in accordance with the Mississippi Rules of Appellate Procedure, except as otherwise provided in these rules, and the Rules of the Commission, which shall control all proceedings before the seven (7) member tribunal. (Amended March 27, 1997; amended effective May 27, 2004, to shorten the period for filing notices of recusal and convening the tribunal.)

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RULES AND REGULATIONS FOR MANDATORY CONTINUING JUDICIAL EDUCATION

Effective July 1, 2012

Rule

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Rule 1. Continuing Judicial Education Committee.

(a) There is hereby established a Committee on Continuing Judicial Education (hereinafter referred to as the Committee) consisting of six members. The Chief Justice of the Mississippi Supreme Court, or the Chief's designee, shall be an ex-officio member without vote. The Committee shall include three (3) members appointed by the Chief Justice of the Supreme Court upon the recommendation of the divisions of Circuit Court, Chancery Court (including the Youth Court), and County Court (including the Family Court Judge), there being one person to be recommended by each conference. The Chief Justice shall appoint one Supreme Court Justice to represent the Supreme Court Justices and one Court of Appeals Judge to represent the Court of Appeals Judges.

(b) The term of the three (3) trial judges of the committee shall be for a term of two years and their election by the conference shall be at the annual meeting of the Conference of Mississippi Judges. From and after July 1, 1989, the division of Circuit Court and the division of Chancery Court shall each elect their one representative for a two year term. The County Court division, which includes the Youth Court Judges, together with the appointment of a Justice from the Supreme Court or Court of Appeals, shall be for an initial term of one year; provided, however, that from and after the annual meeting of the Mississippi Judges in the year 1990, the succeeding terms of the County Judge and the Supreme Court Justice or Court of Appeals Judge shall be for a two year term. The Chief Justice shall appoint a judge from the Court of Appeals and the term initially shall be for a term of one and one-half years beginning January 1, 1995; provided, however, that from and after July, 1996, the succeeding terms of the Court of Appeals Judge shall be for a two year term. The term of the ex-officio member of the committee, shall coincide with his or her term of office. An appointment to fill any vacancy due to the death, resignation or disability of a member shall be for the unexpired term.

(c) The Committee shall have the following duties:

(1) To exercise general supervisory authority over the administration of these rules.

(2) To adopt regulations consistent with these rules. (Amended effective July 1, 1989; August 1, 1994.)

Regulations

1.1 The Chair of the Committee shall be elected by the five (5) voting members of the Committee.

1.2 The Committee shall elect a Vice-Chair and Secretary from among its members.

1.3 The Committee may organize itself into Subcommittees of not fewer than three (3) voting members for the purpose of considering and deciding matters submitted to them except three (3) votes shall be necessary for any action under Rule 6.

1.4 Members of the Committee in the performance of their official duties, shall be reimbursed for expenses subject to reimbursement policies set by the Mississippi Judicial College which funds said reimbursements.

1.5 The Committee may designate such staff as may be necessary and may further delegate executive authority to such staff to conduct the business of the Committee within the scope of the Rules and Regulations, subject at all times, however, to continual review by the Committee and available funding from the Mississippi Judicial College. (Amended effective August 1, 1994.)

Rule 2. Scope and exemptions.

These rules shall apply to every Justice of the Supreme Court, Judges of the Court of Appeals, and Judges of the Circuit, Chancery, County, Family and Youth Courts, including Youth Court Referees, and Senior Judges under Miss. Code Ann. § 9-1-107(5), in the State of Mississippi, except for the following persons who shall be exempt from the requirements of these rules:

(1) Workers' Compensation Commission Administrative Judges.

(2) Justice Court Judges, except insofar as statutory requirements of Miss. Code Ann. 9-11-3 and 9-11-4 (Supp. 1986), dictate. (Amended effective August 1, 1994; amended effective January 1, 1998.)

Rule 3. CJE requirement.

The use of the term "judges" herein shall be deemed to include Senior Judges, Family Court Judges, Circuit Judges, Chancellors, County Court Judges, Youth Court Judges, including Youth Court Referees, Court of Appeals Judges, and Supreme Court Justices. Each judge and justice in the State of Mississippi shall attend, or complete an approved substitute for attendance, a minimum of twelve (12) actual hours of approved Continuing Judicial Education (CJE) during each successive twelve (12) month period (the "CJE year") from and after August 1 of each year, of which one hour shall be in the area of legal ethics, professional responsibility, professionalism, (the "ethics/professionalism hour"), except for Youth Court Referees and new judges as hereinafter provided, and provided the funding for said educational programs is available through the Mississippi Judicial College or state travel allowance.

For every new Youth Court Referee there shall be a requirement that every referee, within six (6) months of being appointed to office, receive at least twelve (12) actual hours of juvenile justice training, approved by the Mississippi Judicial College and thereafter complete at least twelve (12) actual hours of juvenile justice training, approved by the Mississippi Judicial College, each CJE year, provided funding is available through the Mississippi Judicial College or state travel allowance.

Every new circuit, chancery, county, family court judge, elected or appointed, there shall be a requirement that every judge shall attend, within one year of taking office, even though (s)he has not taken office, the General Jurisdiction course at the National Judicial College at Reno, Nevada, or other judicial college approved by the Committee on Continuing Judicial Education provided funding is available through the Mississippi Judicial College or state travel allowance.

Every new justice, elected or appointed, to the Supreme Court and judge, elected or appointed, to the Court of Appeals of the State of Mississippi, shall attend, within one year of taking office, an appropriate appellate judges course approved by the Committee on Continuing Judicial Education provided funding is available through the Mississippi Supreme Court or state travel allowance, or Mississippi Judicial College.

Every new judge, elected or certified to take office on the Court of Appeals, shall attend an intensive education program to be presented by Mississippi Judicial College or other appropriate appellate course. Said program will be approved by the Committee on Continuing Judicial Education provided funding is available through the Mississippi Supreme Court, state travel allowance, or Mississippi Judicial College. This intensive course may eliminate the first year course required in the immediate preceding paragraph if approved by the CJE Committee. (Amended effective August 1, 1994; amended effective January 1, 1998; July 1, 2012; August 1, 2019.)

Regulations

3.1 The number of hours required means that the judge or justice must actually attend twelve (12) instructional hours of CJE per year with no credit given for introductory remarks, meal breaks, or business meetings.

3.1.1 Youth Court Referees will only be credited for instructional hours in juvenile justice training, actually attended, which juvenile justice training shall be approved by the Mississippi Judicial College.

3.2 An instructional hour will in all events contain at least fifty (50) minutes.

3.3 Judges or justices who have a permanent physical disability which makes attendance at CJE programs inordinately difficult may file a request for a permanent substitute program in lieu of attendance and shall therein set out continuing legal education plans tailored to their specific interests and physical ability. The Committee shall review and approve or disapprove such plans on an individual basis and without delay. Rejection of any requested substitute for attendance will be reviewed as provided in Rule 6 prior to any sanction being imposed.

3.4 Other requests for substituted compliance, partial waivers, or other exemptions for hardship or extenuating circumstances may be granted by the Committee upon written application of the judge, and may likewise be reviewed as provided in Rule 6.

3.5 A maximum of twelve (12) hours of credit in excess of the minimum annual requirement may be carried forward for credit in the succeeding CJE year. Such hours must, however, be reported in the Annual Report of Compliance for the CJE year in which they were completed and must be designated as hours to be carried forward.

3.6 Credit will be given only for continuing judicial education activities approved by the Committee on Continuing Judicial Education. Such approval normally must be sought and granted prior to the occurrence of the activity, but may be given retroactively.

3.6.1 Only six hours credit per year can be earned at a Judge Advocate General military course, and no hours may be carried forward from this source. For CJE credit approval, the participating judge/justice shall submit a copy of the program.

3.7.1 Credit may be earned through teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CJE credit on the basis of six (6) hours of credit for each instructional hour presentation. Presentations accompanied by one or two page outlines or not accompanied by written materials will qualify for CJE credit on the basis of three (3) hours of credit per hour of presentation. Repeat presentations qualify for one half of the credits available for the initial presentation.

3.7.2 Credit may also be earned through teaching a course in an ABA or AALS approved law school. The Mississippi Judicial College will award six (6) hours of CJE credit for each hour of academic credit awarded by the law school for the course.

3.7.3 Credit may also be earned through authorship of a law journal article on matters of law published by an ABA or AALS approved law school. The Mississippi Judicial College will award six (6) hours of CJE credit for each such article published.

3.8 Credit may be earned through formal enrollment and education of a postgraduate nature in an ABA or AALS accredited law school. The Mississippi Judicial College will award six (6) hours of CJE credit for each hour of academic credit awarded by the law school.

3.9 A maximum of six (6) hours of CJE credit may be claimed for activities where electronically recorded or reproduced material is used. (Amended effective August 1, 1994; amended effective January 1, 1998; August 1, 2019.)

Rule 4. Credits.

(a) Credit will be given for CJE programs approved by the Mississippi Judicial College.

(b) A maximum of twelve (12) hours in excess of the minimum annual requirement may be carried forward for credit in the succeeding year, except those acquired from a Judge Advocate General program. However, no hours completed in the area of legal ethics, professional responsibility, professionalism shall be carried forward.

(c) Credit may be earned through teaching an approved CJE course or teaching a course in law schools approved by the Mississippi Judicial College.

(d) Youth Court Referees may only earn credit by attending juvenile justice training approved by the Mississippi Judicial College. (Amended effective August 1, 1994; amended effective January 1, 1998; July 1, 2012.)

Regulations

4.1.1 The following standards will govern the approval of continuing judicial education activities by the Committee on Continuing Judicial Education.

4.1.2 The activity must have significant intellectual or practical content and its primary objective must be to increase the participant's professional competence as a judge.

4.1.3 The activity must deal primarily with matters related to the practice of law, professional responsibility or ethical obligations of judges, and the administration of justice.

4.1.4 The activity must be offered by a sponsor having substantial, recent experience in offering continuing legal education or demonstrated ability to organize and present effectively continuing judicial education. Demonstrated ability arises partly from the extent to which individuals with legal training or educational experience are involved in the planning, instruction and supervision of the activity.

4.1.5 The activity itself must be conducted by an individual or group qualified by practical or academic experience. The program, including the named advertised participants must be conducted substantially as planned, subject to emergency withdrawals and alterations.

4.1.6 Thorough, high quality, readable, and carefully prepared written materials must be made available to all participants at or before the time the course is presented, unless the absence of such materials is recognized as reasonable and approved by the Committee on Continuing Judicial Education. Mere outline without citations or explanatory notations will not be sufficient.

4.1.7 The activity must be conducted in a physical setting conducive to learning.

4.1.8 Approval may be given for activities where electronically recorded or reproduced material is used.

4.1.9 Activities that cross academic lines, such as an accounting-tax seminar, may be considered for approval.

4.1.10 At the conclusion of an approved program or activity, each participating judge or justice must be given the opportunity to complete an evaluation questionnaire addressing the quality, effectiveness and usefulness of the particular activity. Within thirty (30) days of the conclusion of the activity a summary of the results of the questionnaire must be forwarded to the Committee. If requested, copies of the questionnaires must also be forwarded to the Committee. Sponsors must maintain the questionnaires for a period of 90 days following a program pending a request for submission of them to the Committee.

4.1.11 The costs of the program itself to the participating judge or justice, apart from optional meals, lodging, travel, etc., must be reasonable considering the subject matter, instructional level, etc.

4.1.12 Each judge or justice, seeking to attend any seminar other than those sponsored by the Mississippi Judicial College shall be responsible for seeking approval from the Committee of the program for CJE credit and funding.

4.1.13 The only continuing judicial education activity approved for Youth Court Referees shall be juvenile justice training approved by the Mississippi Judicial College. (Amended effective August 1, 1994; amended effective January 1, 1998.)

Rule 5. Annual report.

On or before August 31 of each year, each judge and justice subject to CJE in the state, shall make a written report to the Mississippi Judicial College, in such form as the college shall prescribe, concerning his or her compliance with these rules accredited judicial education during the preceding CJE year. (Amended effective July 1, 1989; August 1, 1994; August 1, 2019.)

Regulations

5.1 On or before August 31 of each year, each judge or justice will submit a report to the Mississippi Judicial College concerning completion of hours earned during the preceding CJE year and hours to be carried forward to the next CJE year.

5.2 The files and records of the Mississippi Judicial College are deemed confidential and shall not be disclosed except in furtherance of the duties of the Committee; statistical abstracts may, however, be drawn therefrom in an anonymous fashion. (Amended effective July 1, 1989; August 1, 1994; August 1, 2019.)

Rule 6. Noncompliance and sanctions.

(a) As soon as practicable after October 1 of each year, the Mississippi Judicial College shall compile the following:

(1) A list of those judges, or justices who have complied with these rules for the prior preceding CJE year ending July 31, as required by Rules 3 and 5, Mississippi Rules for Mandatory Continuing Judicial Education.

(2) A list of judges or justices who have not complied with these rules for the prior preceding CJE year ending July 31 indicating that they have not complied with the requirement of Rules 3 and 5, Mississippi Rules for Mandatory Continuing Judicial Education.

(3) Any request for waiver of these rules from any judge/justice.

(b) The above lists shall then be forwarded to the Committee On Mandatory Continuing Judicial Education who shall then notify, by certified mail, each judge/justice who has not complied with Rules 3 and 5, Mississippi Rules for Mandatory Continuing Judicial Education within sixty (60) days, why the judge/justice should not be reported to the Supreme Court for sanction. Said judge/justice shall furnish the Committee with an affidavit:

(1) Indicating that the judge/justice has complied with the requirement prior to expiration of the sixty (60) days, or

(2) Setting forth a valid excuse for failure to comply with the requirements because of hardship or other good cause.

(c) At the expiration of sixty (60) days from the date of the Notice to Show Cause, the Committee shall notify the Supreme Court of Mississippi of each judge/justice who fails to file an affidavit satisfactory to the Committee On Mandatory Continuing Judicial Education as described in (b)(l) and (b)(2) above and may recommend appropriate sanctions to the Mississippi Supreme Court. The sanctions are to be determined by said Supreme Court. Said sanctions may include a private reprimand, public reprimand, and/r the publication of the name of said judge in the *Mississippi Lawyer* as not having satisfactorily completed mandatory judicial education, or other appropriate sanction.

(d) At any time after notice of noncompliance to the Supreme Court, a judge/justice may file with the Committee an affidavit indicating compliance with Rules 3 and 5, Rules for Mandatory Continuing Judicial Education; and if satisfactory to the Committee On Mandatory Continuing Judicial Education, it shall forthwith notify the Supreme Court and may recommend sanctions to be imposed by the Supreme Court.

(e) Any Youth Court Referee who fails to comply with the continuing judicial educational requirements of §43-21-111 (2) Miss. Code Ann. or Rule 3 hereof shall be disqualified to serve as a Youth Court Referee, until compliance, in accordance with §43-21-111(2) Miss Code Ann. (Amended effective July 1, 1989; August 1, 1994; amended effective January 1, 1998; August 1, 2019.)

Rule 7. Additional policies.

No examination or testing shall be required at any continuing legal education course mandated by Rule 7, Mississippi Rules for Mandatory Continuing Judicial Education.

Rule 8. Sunset review.

The Supreme Court of the State of Mississippi shall review the Mandatory Continuing Judicial Education Program five years from and after January 1,

2001. However, the Supreme Court is not precluded from considering the rules, organization and agenda, or any other matter of this program during this time period. (Amended December 31, 1991; January 11, 1996.)

Appendix

The Commissioners approved on September 1, 1987, the following sponsors for credit toward Mandatory Continuing Judicial Education requirements for all judges and justices, excluding Youth Court referees, from any approved course of:

A. The Mississippi Commission on Continuing Legal Education, P.O. Box 362, Jackson, Mississippi 39205-0369, or another similar authority of any state;

B. The National Judicial College, University of Nevada, Reno, Nevada, 89557;

C. The Appellate Course, New York University, New York, New York;

D. The ABA Judicial Administration Division, Appellate Judges' Conference, 750 N. Lake Shore Drive, Chicago, Illinois 60611;

E. The American Academy of Judicial Education, 2025 Eye Street, N.W., Suite 903, Washington, D.C. 20006;

F. The Institute for Court Management of the National Center for State Courts, Suite 402, 1331 17th Street, Denver, Colorado 80202;

G. The National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23187-8798;

H. The National College of Juvenile Justice, P.O. Box 8978, Reno, Nevada 89507;

I. The National College of Juvenile and Family Law, P.O. Box 8978, Reno, Nevada 89507;

J. The University of Virginia, School of Law, Graduate Program for Judges, Charlottesville, Virginia 22901;

K. Study toward the Master of Laws in the Judicial Process degree offered by the University of Virginia Law School; and,

L. The Mississippi Judicial College, P.O. Box 8850, University, Mississippi 38677.

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RULES AND REGULATIONS GOVERNING CERTIFIED COURT REPORTERS

Effective January 2, 1995, *nunc pro tunc*
by order of August 22, 1995, and amended effective January 1, 2015.

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I. Definitions.

As used in these rules and regulations, the following terms have the following meanings, unless expressly otherwise provided, or as may result from necessary implication:

(A) *Applicant.* Individual applying for certification as a certified court reporter or individual applying for temporary permission as a noncertified court reporter or an individual applying for temporary permission as a nonresident court reporter.

(B) *Board.* Board of Certified Court Reporters.

(C) *Clerk.* Clerk of the Supreme Court.

(D) *Court.* Supreme Court of Mississippi.

(E) *Notify or notified.* Notice by the Board shall be effective when mailed by regular first class mail, postage prepaid, to the address listed by the applicant on his/her application. Applicants shall notify the Board in writing of any change in mailing address occurring after their applications have been received by the Board.

(F) *Rules and regulations.* The Rules and Regulations Governing Certified Court Reporters as adopted by the Board and approved by the Supreme Court.

(G) *Secretary.* Secretary of the Board of Certified Court Reporters.

(H) *Court Reporting.* Means the making of a verbatim record by means of written symbols or abbreviations in pen shorthand, machine shorthand, or oral stenography (also known as steno mask) of testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies or the Legislature or any committee or subcommittee thereof, or where appeal to any court of the State of Mississippi is allowable by law. The making of a verbatim record includes the taking of a deposition.

(I) *Certification.* Authorization by the Board to engage in the practice of court reporting as regulated by the Board.

(J) *Certified Court Reporter.* A person holding a licensure card issued by the Board permitting the person to engage in the practice of court reporting as regulated by the Board. The licensure card shall indicate the method or methods by which the court reporter has successfully passed examination, and a court reporter shall be licensed to use only that method of reporting. Upon being granted licensure, a court reporter is entitled to use the title 'Certified Court Reporter' or the abbreviation "CCR."

(K) *Temporary Permission.* A person holding a licensure card issued by the Board which gives authorization to a Noncertified Court Reporter or a Nonresident Court Reporter to engage in the practice of court reporting in the State on a limited basis as set forth in these rules and as regulated by the Board. Said licensure card shall state that the court reporter has Temporary Permission as a Noncertified Court reporter or as a Nonresident Court Reporter, and it shall also state the method or methods by which said court reporter is authorized to practice.

(L) *Noncertified Court Reporter.* A person with Mississippi residency who is granted temporary permission by the Board to engage in the practice of court reporting on a limited basis without obtaining full certification and after meeting the qualifications and requirements as set forth in these rules. A Noncertified Court Reporter shall not be entitled to use the title "Certified Court Reporter" or the abbreviation "CCR."

(M) *Nonresident Court Reporter.* A person who does not reside in the State of Mississippi and is granted temporary permission by the Board to engage in the practice of court reporting on an annual basis after meeting the qualifications and requirements as set forth in these rules.

(N) *Reciprocity.* Only applies to those applicants seeking certification by reciprocity and not certification by examination. Agreements with any state, agency, or other entity that licenses, certifies, or registers court reporters, such as the National Court Reporters Association (NCRA), the National Verbatim Reporters Association (NVRA), if the Board finds that the state, agency, or other entity has substantially the same or more stringent requirements as the Mississippi Board of Certified Court Reporters.

(O) *NCRA.* The National Court Reporters Association.

(P) *RPR.* Registered Professional Reporter certificate issued by NCRA to a court reporter who successfully completes the examination requirements.

(Q) *NVRA.* The National Verbatim Reporters Association.

(R) *CVR.* Certified Voice Reporter certificate issued by NVRA to a court reporter who successfully completes the examination requirements.

(S) *Revoke a license.* To unconditionally prohibit the conduct authorized by the license.

(T) *Suspend a license.* To prohibit, whether absolutely or subject to conditions which are reasonably related to the grounds for suspension, for a defined period of time, the conduct authorized by the license.

(U) *Official Court Reporter.* A competent and properly licensed court reporter who has been appointed by a circuit, chancery, or county court judge in his/her county or district by entry of an order to that effect upon the minutes of the court to make a verbatim record of testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies, or the Legislature or any committee or subcommittee thereof, or where appeal to any court of the State of Mississippi is allowable by law. That reporter shall be known as the official court reporter of said district or county, shall be a full-time employee, and may not engage in any freelance reporting activities.

(V) *Freelance Court Reporter.* A competent and properly licensed court reporter engaged in the practice of court reporting which is defined as the following: Making a verbatim record of testimony or proceedings relevant to matters under the jurisdiction of the courts of the State of Mississippi, all state agencies, or the Legislature or any committee or subcommittee thereof, or where appeal to any court of the State of Mississippi is allowable by law. The taking of a deposition shall be defined as the making of a verbatim record. (Approved effective January 1, 2012; amended effective January 1, 2015.)

II. Board of certified court reporters.

(A) *Creation.* By virtue of Section 9-13-101 et seq., Mississippi Code of 1972, the Mississippi Legislature created a judicial board to be known as the Board of Certified Court Reporters to oversee the licensing of certified court reporters and the granting of temporary permission to noncertified and nonresident court reporters in order to aid the proper administration of the judicial branch of government.

(B) *Appointment — Term of office.* The Board shall be composed of nine (9) members. Two (2) members shall be judges, one (1) from the Supreme Court and one (1) from a trial court, appointed by the Chief Justice of the Supreme Court with the approval of the full court. Two (2) of the Board members shall be practicing attorneys and shall be appointed by the Chief Justice, with the approval of the full court, on nomination by the Mississippi Bar. Two (2) of the members shall be official court reporters in, and citizens of, Mississippi for at least five (5) years prior to their appointments and shall be appointed by the

Chief Justice with approval of the full court on nomination by the Board of Directors of the Mississippi Court Reporters Association. Two (2) of the members shall be freelance court reporters in, and citizens of, Mississippi for at least five (5) years prior to their appointments and shall be appointed by the Chief Justice with approval of the full court on nomination of the Board of Directors of the Mississippi Court Reporters Association. The ninth Board member shall be the Supreme Court Clerk, who shall serve as a permanent member of the Board. Initially, for judges, lawyers and court reporters, one (1) of the two (2) shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. For court reporters, one (1) official shall be appointed for a term of one (1) year and one (1) for a term of two (2) years and one (1) freelance reporter shall be appointed for a term of one (1) year and one (1) for a term of two (2) years. After each member's term expires, his/her successor shall be appointed for a term of two (2) years. The Chief Justice of the Supreme Court shall fill any vacancy for the duration of an unexpired term by appointing a person having the appropriate qualifications. The Supreme Court may remove any member for cause. Members may be appointed to successive terms.

(C) *Duties and powers.* The Board is charged with the duties and vested with the power and authority:

(1) To determine the content of and administer examinations to be given to applicants for certification as Certified Court Reporters.

(2) To determine an applicant's ability to make a verbatim record of proceedings which may be used in any court in this State by any recognized system designated by the Board and to pass upon the eligibility of applicants for certification, Temporary Permission as a Noncertified Court Reporter or Temporary Permission as a Nonresident Court Reporter.

(3) To issue licenses to those found qualified as Certified Court Reporters, to grant Temporary Permission to those Noncertified Court Reporters with Mississippi residency who meet the qualifications and requirements as set forth in these rules, and to grant Temporary Permission to those Nonresident Court Reporters who meet the qualifications and requirements as set forth in these rules.

(4) To promulgate, amend and revise regulations relevant to the duties of the Board, subject to the approval of the Supreme Court.

(5) To make studies and, from time to time, recommendations to the Supreme Court concerning matters pertaining to Certified Court Reporters and to reporters granted Temporary Permission as Noncertified Court Reporters or as Nonresident Court Reporters.

(6) To account to the Supreme Court in all fiscal matters following recognized accounting procedures of the State Auditor.

(7) To exercise jurisdiction over disciplinary matters with regard to Certified Court Reporters or Court Reporters who are granted Temporary Permission as Noncertified Court Reporters or as Nonresident Court Reporters in accordance with the rules and regulations adopted by the Board.

(8) To enter into contracts, hire staff and do such other things as may be necessary to carry out the administration of the duties of the Board.

(9) To maintain a current roll of Certified Court Reporters and a current roll of court reporters granted Temporary Permission as Noncertified or Nonresident Court Reporters, and said rolls shall be matters of public record.

(D) *Oath.* Each member of the Board shall take a prescribed oath to be administered by one (1) of the Justices of the Supreme Court, or by another person authorized by law to take oaths, to fairly, impartially and to the best of his/her ability discharge the duties of the office and agree to keep confidential all communications, discussions, and actions of the Board, unless ordered by a court of competent jurisdiction.

(E) *Officers.* At the first meeting of the calendar year, the Board shall elect a Chairman and a Vice-Chairman. The Board's Administrator shall serve as Secretary/Treasurer.

(F) *Compensation and expenses.* The members of the Board shall receive all reasonable and necessary travel expenses incurred in the performance of their duties. All fees collected by the Board shall be paid to the State Treasurer, who shall issue receipts therefore and who shall deposit such funds in the State Treasury in a special fund to the credit of the Board. All expenses incurred by the Board shall be paid out of such special fund pursuant to legislative appropriation. An annual budget shall be prepared by the Supreme Court and submitted to the Board for its approval prior to submission by the Court of its budget to the Mississippi State Legislature.

(G) *Quorum.* The Board shall act upon each application at a special or regular meeting of the Board at which a quorum is present. A quorum shall consist of a majority of the members. Action on any matter at the meeting of the Board may be taken by a majority of a quorum. The Board may act upon any matter without a meeting by a written poll conducted by the Chairman. Action taken upon such a poll may be taken only upon majority vote of the entire Board. The action of the Board taken by written poll shall be placed in the minutes of the Board at its next meeting.

(H) *Headquarters.* The office of the Board shall be located at 450 High Street, Jackson, Mississippi, 39201. The mailing address of the Board is P.O. Box 369, Jackson, Mississippi, 39205-0369, and the telephone number is (601) 576-4623. (Approved effective January 1, 2012.)

III. Applications for certification or temporary permission as a noncertified court reporter or as a nonresident court reporter.

(A) *Application forms and fees.* Upon request, the Board shall forward to any person application forms, statement of reference forms, and copies of the statutes and regulations of the Board. There shall be a fee of $25.00 for the packet of official confidential application forms (money order, certified check or cash only). A packet may be obtained by writing to the Board. Only official confidential application forms obtained from the Board shall be processed or considered by the Board.

Applicants applying for Certification (Mississippi residency required), Temporary Permission as a Noncertified Court Reporter (Mississippi residency required), or Temporary Permission as a Nonresident Court Reporter shall file with the Board a written application in the form prescribed by the Board, together with payment of a nonrefundable fee of $100 and a cover letter to the Board stating the type of licensure he/she is requesting and why he/she would like to be a licensed reporter in the State of Mississippi.

No application shall be accepted which is not filed on official forms and which is not accompanied by the full amount of fees due. Payment of fees shall be made to "Board of Certified Court Reporters." Applications must be complete at time of filing. The applicant must give a full and direct response to all inquiries on the application and must furnish all additional documents as required by the application. If complete documentation is not provided where applicable, said application shall not be processed or considered by the Board.

Applicants applying for Temporary Permission as a Nonresident Court Reporter shall sign and submit to their home state in which he/she is licensed any necessary privacy release form(s) which would enable the Board to obtain documents, records, and any other information pertaining to said applicant. It is the duty of the applicant to know whether or not a privacy release form is required by his/her home state prior to any information being released to the Board. If this document is not provided where applicable, said application shall not be processed or considered by the Board.

(B) *Qualifications of applicants.* Applications shall be screened by the Board, and those applicants twenty-one (21) years of age or older and of good moral character and a resident of the State of Mississippi, where applicable, shall be deemed eligible to take the Mississippi BCCR Examination and considered for Temporary Permission as a Noncertified Court Reporter, or considered for Temporary Permission as a Nonresident Court Reporter, or considered for Certification by Reciprocity. If applying for Temporary Permission as a Noncertified Court Reporter, an application must be filed with the Board at least thirty (30) days before the date fixed for examination. Each applicant shall be advised of the time and place the examination will be conducted, and the dates for said examinations shall be posted on the Board's website.

(C) *Denial of application.* All decisions of the Board denying an application for Certification, Temporary Permission as a Noncertified Court Reporter, or Temporary Permission as a Nonresident Court Reporter shall be made in writing, and the reasons for denying the application shall be included in the decision of the Board. The applicant shall be notified within thirty (30) days of the Board's decision. (Approved effective January 1, 2012.)

IV. Review before the board.

(A) *Petition for Review.* If an application for Certification or Temporary Permission is not acted upon favorably by the Board, the applicant may file a Petition for Review. Such Petition must be filed not later than forty-five (45) days after the date on which the Board has notified the applicant by mail of its decision.

(B) *Content of Petition.* A Petition for Review shall be verified under oath by the applicant and shall designate the reasons for such Petition. The Petition shall particularize how the decision of the Board is unjustified. No generalized claims shall be considered by the Board.

(C) *Review by Board.* Upon receipt of a Petition for Review, a review committee of not less than three (3) members of the Board shall review the application. In the event that a majority of the members of the Review Committee finds clear and manifest evidence that the application should not have received favorable consideration, the Review Committee shall so report to the Board and the Board, as a whole, shall review the application. In the event that a majority of the members of the Review Committee finds that the application should have received favorable consideration, such determination shall be final without further action by the Board as a whole. Upon completion of the review process, an order shall be entered in the Board minutes granting or denying the applicant's Petition. The applicant shall be notified within thirty (30) days of the Board's final decision on the Petition. (Approved effective January 1, 2012.)

V. Temporary permission as a noncertified court reporter (Mississippi residency required).

Applying for Temporary Permission as a Noncertified Court Reporter.

(A) *Requirements:* A Noncertified Court Reporter may make application to the Board for temporary permission to do verbatim reporting within the State. To be granted temporary permission, the applicant must make application on the same official forms as required of other applicants, must pay the Board a fee of $100, and must furnish proof that he/she has previously been a competent practicing reporter in another state that is not governed by certification and/or licensure rules and regulations or furnish proof of attendance at a court reporting program with documentation of a passing grade at the speed of 225 words per minute of Multi-Voice Testimony (Question and Answer), shall furnish proof that he/she is a resident of the State of Mississippi, and shall provide all documentation as required by the official application form.

(B) Temporary Permission may be granted upon a finding by the Board that the applicant is twenty-one (21) years of age or older, is of good moral character, is a resident of the State of Mississippi, and has previously been a competent practicing reporter in another state that is not governed by certification and/or licensure rules and regulations or attended a court reporting program with a passing grade at the speed of 225 words per minute of Multi-Voice Testimony (Question and Answer), and has provided all documentation as required by the official application form. Temporary Permission shall be renewed on or before January 2nd of the succeeding year upon payment of the annual fee for a period not to exceed thirty-six (36) months after being granted said temporary permission unless extended by the Board in accordance with Miss. Code Ann. § 9-13-121(2).

(C) A Noncertified Court Reporter who is granted temporary permission shall take examinations until each portion of said examination is passed in accordance with Rule XI. The court reporter shall immediately notify the Board in writing when he/she passes both Part A and Part B of the examination and request Certification by Examination licensure. If the applicant does not pass both Part A and Part B of the examination within the time provided in Miss. Code Ann. § 9-13-121(2), the court reporter shall no longer be eligible for temporary permission and must apply to the Board for Certification by Examination or Certification by Reciprocity licensure. The Board shall grant temporary permission to a noncertified court reporter one time.

(D) The Board shall issue to each successful applicant a licensure card containing the following information: Temporary Permission as a Noncertified Court Reporter number, temporary permission expiration date, and method of reporting to be used. A court reporter shall only use that method of reporting in which he/she has applied for and has been granted temporary permission. Said temporary permission number shall be placed on any transcript title page and certificate page, along with the signature of said court reporter. No court reporter granted temporary permission may authorize the use of the court reporter's temporary permission number on any transcript not produced through the court reporter's personal effort and/or supervision.

(E) A Noncertified Court Reporter shall comply with provisions set forth in Rule IX and the continuing education requirements as set forth in Rule X(C).

(F) A Noncertified Court Reporter shall not be entitled to use the title "Certified Court Reporter" or the abbreviation "CCR." (Approved effective January 1, 2012.)

VI. Temporary permission as a nonresident court reporter.

Applying for Temporary Permission as a Nonresident Court Reporter.

(A) *Requirements:* A nonresident court reporter wishing to make a verbatim record of any testimony of a proceeding, the jurisdiction of which is within the courts of Mississippi or where appeal to any court of the State of Mississippi as allowable by law, shall make annual application for temporary permission as a nonresident court reporter. The applicant must make application on the same official forms as required of other applicants, must pay the Board a fee of $100, and must present proof that he/she is a competent practicing reporter in good standing in another state that is governed by certification and/or licensure rules and regulations or holds a Registered Professional Reporter (RPR) certificate issued by the National Court Reporters Association (NCRA) and is in good standing with NCRA or holds a Certified Voice Reporter (CVR) certificate issued by the National Verbatim Reporters Association (NVRA) and is good standing with NVRA, and shall provide all documentation as required by the official application form. The Board shall only consider applications for nonresident temporary permission from reporters in states that grant similar privileges to applicants from this state.

(B) The Board shall issue temporary permission to a nonresident court reporter upon a finding that the applicant is twenty-one (21) years of age or older, is of good moral character, and is a competent practicing reporter in good standing in another state that is governed by certification and/or licensure rules and regulations or holds a Registered Professional Reporter (RPR) certificate issued by the National Court Reporters Association (NCRA) and is in good standing with NCRA or holds a Certified Voice Reporter (CVR) certificate issued by the National Verbatim Reporters Association (NVRA) and is good standing with NVRA, and has provided all documentation as required by the official application form. Such temporary permission shall be valid for a period not greater than one year. A nonresident court reporter must reapply annually on the same official forms as required for initial application. An annual fee of $100 or such fee as the Board may hereafter set is required.

(C) The Board shall issue to each successful applicant a licensure card containing the following information: Temporary Permission as a Nonresident Court Reporter number, temporary permission expiration date, and method of reporting to be used. A court reporter shall only use that method of reporting in which he/she has applied for and has been granted temporary permission. Said temporary permission number shall be placed on any transcript title page and certificate page, along with the signature of said court reporter. No court reporter granted temporary permission may authorize the use of the court reporter's temporary permission number on any transcript not produced through the court reporter's personal effort and/or supervision.

(D) A Nonresident Court Reporter shall comply with the provisions set forth in Rule IX and the continuing education requirements as set forth in Rule X(D). (Approved effective January 1, 2012.)

VII. Certification by examination.

(A) *Examination requirements:* A court reporter may make application to the Board for Certification by examination to do verbatim reporting within the State of Mississippi. To be granted Certification by examination, the applicant must make application on the same official forms as required of other applicants, shall provide all documentation as required by the official application form, must pay the Board a fee of $100, provide proof of residence in the State of Mississippi, meet all other requirements of the Board for certification, and provide proof that the applicant has successfully passed the examination administered by the Mississippi Board of Certified Court Reporters as set forth in Rule XI. Examinations, either written knowledge or skills portions/legs, given in other states will not be valid and not qualify the applicant for certification by examination as set forth in this subsection.

(B) Certification shall be granted upon a finding by the Board that the applicant is twenty-one (21) years of age or older, is of good moral character, is a resident of the State of Mississippi, has provided all documentation as required by the official application form, and has provided proof that the applicant has successfully passed the examination administered by the Mississippi Board of Certified Court Reporters as set forth in Rule XI.

(C) The Board shall issue to each successful applicant a licensure card containing the following information: Certification number, certification expiration date, and method of reporting. A court reporter shall be certified to use only that method of reporting in which he/she has been examined/certified. Said CCR number shall be placed on any transcript title page and certificate page, along with the signature of said court reporter. No licensed court reporter may authorize the use of the court reporter's CCR number on any transcript not produced through the court reporter's personal effort and/or supervision.

(D) *Annual fee.* The designation "Certified Court Reporter (CCR)", once granted by the Board, shall remain in effect upon the payment to the Board of an annual fee of $100.00, or such other amount as may be hereafter established by the Board, on or before January 2nd of each succeeding year unless such designation is suspended or revoked. Upon payment of the annual fee and compliance with continuing educational requirements under Rule IX(A) herein, a court reporter shall have renewal of their license on or before January 2nd of each succeeding year.

(E) The Board may reinstate an expired license if, not later than the 120th day after the date of expiration, the applicant pays the renewal fee and a penalty fee of $50.00. The reinstatement dates from the original date of expiration. The Board may reinstate a license that has expired for more than 120 days if the Board finds, on a sworn affidavit of the applicant, that the applicant has retained the professional skills required for original certification and has paid all delinquent renewal fees and a penalty fee of $50.00. If the Board finds otherwise, the court reporter must reapply for certification.

(F) A Certified Court Reporter shall comply with the provisions set forth in Rule IX and the continuing education requirements as set forth in Rule X(B).

(G) Upon being granted certification, a court reporter is entitled to use the title "Certified Court Reporter" or the abbreviation "CCR" in conjunction with their names. (Approved effective January 1, 2012.)

VIII. Certification by reciprocity.

(A) *Reciprocity Requirements:* A court reporter from another state may make application to the Board for Certification by reciprocity to do verbatim reporting within the State of Mississippi. To be granted Certification by reciprocity, the applicant must make application on the same official forms as required of other applicants, shall provide all documentation as required by the official application form, must pay the Board a fee of $100, provide proof of residence in the State of Mississippi, meet all other requirements of the Board for certification, and provide proof that the applicant has successfully passed any of the following: The Registered Professional Reporter (RPR) examination administered by the National Court Reporters Association (NCRA), the Certified Voice Reporter (CVR) examination as administered by the National Verbatim Reporters Association (NVRA), or any state, agency, or other entity that licenses, certifies, or registers court reporters, if the Board finds that the state, agency, or other entity has substantially the same or more stringent requirements as the Mississippi Board of Certified Court Reporters. The applicant must ensure that his/her examination scores and a copy of his/her certificate and/or license are furnished to the Mississippi Board of Certified Court Reporters by said state, agency, association, or other entity.

(B) Certification shall be granted upon a finding by the Board that the applicant is twenty-one (21) years of age or older, is of good moral character, is a resident of the State of Mississippi, has provided all documentation as required by the official application form, and has provided proof that the applicant has successfully passed any of the following: The Registered Professional Reporter (RPR) examination administered by the National Court Reporters Association (NCRA), the Certified Voice Reporter (CVR) examination as administered by the National Verbatim Reporters Association (NVRA), or any state, agency, or other entity that licenses, certifies, or registers court reporters, if the Board finds that the state, agency, or other entity has substantially the same or more stringent requirements as the Mississippi Board of Certified Court Reporters (the applicant must ensure that his/her examination scores and a copy of his/her certificate and/or license are furnished to the Mississippi Board of Certified Court Reporters by said state, agency, association, or other entity).

(C) The Board shall issue to each successful applicant a licensure card containing the following information: Certification number, certification expiration date, and method of reporting. A court reporter shall be certified to use only that method of reporting in which he/she has been examined/certified. Said CCR number shall be placed on any transcript title page and certificate page, along with the signature of said court reporter. No licensed court reporter may authorize the use of the court reporter's CCR number on any transcript not produced through the court reporter's personal effort and/or supervision.

(D) *Annual fee.* The designation "Certified Court Reporter (CCR)", once granted by the Board, shall remain in effect upon the payment to the Board of an annual fee of $100.00, or such other amount as may be hereafter established by the Board, on or before January 2nd of each succeeding year unless such designation is suspended or revoked. Upon payment of the annual fee and compliance with continuing educational requirements under Rule IX(A) herein, a court reporter shall have renewal of their certificate on or before January 2nd of each succeeding year.

(E) The Board may reinstate an expired license if, not later than the 120th day after the date of expiration, the applicant pays the renewal fee and a penalty fee of $50.00. The reinstatement dates from the original date of expiration. The Board may reinstate a license that has expired for more than 120 days if the Board finds, on a sworn affidavit of the applicant, that the applicant has retained the professional skills required for original certification and has paid all delinquent renewal fees and a penalty fee of $50.00. If the Board finds otherwise, the court reporter must reapply for certification.

(F) A Certified Court Reporter shall comply with the provisions set forth in Rule IX and the continuing education requirements as set forth in Rule X(B).

(G) Upon being granted certification, a court reporter is entitled to use the title "Certified Court Reporter" or the abbreviation "CCR" in conjunction with their names. (Approved effective January 1, 2012.)

IX. Requirements for certified court reporters and court reporters granted temporary permission.

(A) *Roll of Court Reporters.* The Board shall maintain current rolls containing names and pertinent information on all individuals who have been certified as Certified Court Reporters or individuals granted Temporary Permission as Noncertified or Nonresident Court Reporters, and said rolls shall be matters of public record. These rolls shall contain a roster of all court reporters eligible and available for appointment.

(B) Certified Court Reporters and individuals granted Temporary Permission as Noncertified or Nonresident Court Reporters must notify the Board in writing within thirty (30) days of any change in employment, home, or business address, and/or telephone number.

(C) *Oath.* Upon Certification or the granting of Temporary Permission, a court reporter shall taken an oath, on a form provided by the Board, that he/she will faithfully discharge his/her duties; the oath so taken shall be submitted to the Mississippi Board of Certified Court Reporters.

Before entering into his/her office, an official court reporter shall take, in open court, an oath that he/she will faithfully discharge the duties thereof; the oath so taken shall be entered into the minutes of the court, pursuant to Miss. Code Ann. § 9-13-3(1974).

(D) *Bond.* All court reporters shall give bond in a penalty of not less than two thousand dollars, pursuant to Miss. Code Ann. § 9-13-9(1974).

The bond of an official court reporter shall be approved by the court, conditioned for the faithful discharge of duties and shall be filed in the office of the clerk of the court of any county in the district, who shall, at the cost of the court reporter, certify a copy thereof to the clerk of said court in each of the other counties of the district, to be filed and preserved in his office, and said copies shall be competent evidence in any proceedings. Such bond shall be recorded at length in the bond record of the county where the original is filed.

(E) *Code of professional ethics.* Each reporter shall abide by the following code of ethics which has been adopted by the Board:

(1) Be fair and impartial toward each participant in all aspects of reported proceedings, and always offer to provide comparable services to all parties in a proceeding.

(2) Be alert to situations that are conflicts of interests or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the reporter shall disclose that conflict or potential conflict.

(3) Guard against not only the fact but the appearance of impropriety.

(4) Preserve the confidentiality and ensure the security of information, oral or written, entrusted to the reporter by any of the parties in a proceeding.

(5) Be truthful and accurate when making public statements or when advertising the reporter's qualifications, certifications, or the services provided.

(6) Refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations.

(7) Determine fees independently, except when established by statute or court order, entering into no unlawful agreements with other reporters on the fees to any user.

(8) Refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys or their staff, clients, witnesses, insurance companies, or any other persons or entities who retain the services of a court reporter, or to the representatives or agents of any of the foregoing, except for (1) items that do not exceed $100 in the aggregate per recipient each year, or, (2) pro bono services as defined by the NCRA Guidelines for Professional Practice or by applicable state and local laws, rules and regulations.

(9) Maintain the integrity of the reporting profession.

(10) Reporters granted certification or temporary permission shall place their Certification or Temporary Permission number on any transcript title page and certificate page, along with the signature of said court reporter. No court reporter granted certification or temporary permission may authorize the use of the court reporter's number on any transcript not produced through the court reporter's personal effort and/or supervision.

(11) Abide by the rules and regulations governing Certified Court Reporters and Court Reporters granted Temporary Permission in this state, any and all applicable Mississippi Supreme Court rules, and any and all applicable laws as set forth in the Mississippi Code of 1972, as amended. (Approved effective January 1, 2012.)

Editor's Note — Former Rule IX, entitled "Discipline," was renumbered as Rule XII, effective January 1, 2012.

X. Continuing education.

(A) *Continuing Education Definition:* Continuing education credits must contribute directly to the competence and professionalism of court reporters. The Board shall be authorized to approve continuing education activities which include but are not limited to the following subject areas: language; academic knowledge; health and wellness; statutes, rules and regulations; court reporting technology; business practice; and ethical practices-professionalism.

(B) *Requirement for Certified Court Reporters.* In order to maintain certification, all certified court reporters shall be required to obtain a minimum of thirty (30) continuing education credits over a three-year period in courses approved by the Board or in compliance with the continuing education requirements of the National Court Reporters Association or the National Verbatim Reporters Association. The three-year period will begin on January 2nd of the year during which the reporter is initially certified. No credits may be carried over to the following three-year term, and the court reporter shall comply with the provisions as set forth in Rule X(E) for reporting continuing education credits earned.

(C) *Requirement for Court Reporters Granted Temporary Permission as Noncertified Court Reporters.* In order to maintain temporary permission, all noncertified court reporters shall be required to obtain a minimum of thirty (30) continuing education credits over a three-year period in courses approved by the Board or in compliance with the continuing education requirements of the National Court Reporters Association or the National Verbatim Reporters Association. The three-year period will begin on January 2nd of the year during which the reporter is initially granted temporary permission. After the court reporter becomes certified, either by examination or reciprocity, any credits earned during that current year may be carried over to fulfill the continuing education requirements for certified court reporters as set forth in Rule X(B). The court reporter shall comply with the provisions as set forth in Rule X(E) for reporting continuing educations credits earned.

(D) *Requirement for Reporters Granted Temporary Permission as Nonresident Court Reporters.* All Nonresident Court Reporters shall be required to maintain good standing with respect to the continuing education requirements as set forth and governed by the rules and regulations of his/her home state of original certification and/or licensure or with respect to the continuing education requirements as set forth and governed by the National Court Reporters Association (NCRA) or the National Verbatim Reporters Association (NVRA).

(E) *Report.* Each Certified Court Reporter and reporters granted Temporary Permission as Noncertified or Nonresident Court Reporters shall make a written report to the Board, in such form as the Board shall prescribe, concerning his/her completion of the continuing education requirements for credit other than Mississippi Judicial College or Mississippi Court Reporters Association seminars which are already reported by those associations, on or before January 2nd at the conclusion of the third year. The Administrator of the Board shall be the recorder of continuing education credits.

(F) *Noncompliance and Sanctions.* If the Board's records reflect that a court reporter has not attained the required continuing education credits as set out hereinabove, the Board shall serve, by certified mail, the court reporter with an order to show cause within sixty (60) days why the reporter's certification or temporary permission should not be suspended. Upon receipt of an order to show cause, the court reporter shall furnish the Board with an affidavit setting forth the following:

(1) That the court reporter has complied with the requirements prior to the expiration of sixty (60) days and proof thereof, or

(2) Setting forth a valid excuse for failure to comply with the requirements because of illness or other good cause.

(G) *Reinstatement.* If a reporter's certification is suspended, he§he may file an affidavit, together with a reinstatement fee of $100, with the Board indicating compliance with the continuing education requirements, and the Board may agree to reinstate the court reporter's certification or temporary permission. Upon receipt of the affidavit and reinstatement fee, the Board shall review the same within thirty (30) days.

If the Board finds that the court reporter has complied with the requirements as set forth in IX(C)(1)(2), the reporter's certification or temporary permission shall be reinstated.

If the Board finds that the court reporter has not complied with the requirements as set forth in IX (C)(1)(2), the court reporter's certification or temporary permission shall continue to be suspended until such time as the continuing education requirement is fulfilled, and the court reporter shall not be permitted to practice court reporting in the State of Mississippi during the period of said suspension, and any violation shall subject the reporter's certification or temporary permission to being revoked. If a court reporter's certification or temporary permission is revoked, the court reporter must reapply for certification or temporary permission. (Approved effective January 1, 2012.)

XI. Mississippi court reporter examination.

(A) *Certified Court Reporter Examination Defined.* The State of Mississippi's Certified Court Reporter examination shall be the Mississippi Court Reporter Examination. The Mississippi Court Reporter Examination shall be administered biannually under the direction of the Board of Certified Court Reporters. For the Mississippi Court Reporter Examination, all grading decisions of the Board of Certified Court Reporters shall be final.

(B) *Mississippi Court Reporter Examination.*

(1) Fees for the Mississippi Court Reporter Examination shall be as follows:

Application fee	$ 50.00
Examination fee, written knowledge only	$ 75.00
Examination fee, skills only	$ 100.00
Examination fee, written knowledge and skills	$ 125.00

The $50.00 application fee is a one-time, nonrefundable fee. If only the written knowledge portion of the examination is to be taken, the examination fee is $75.00; if only the skills portion is to be taken, the examination fee is $100.00; or if both the written knowledge and the skills portion are to be taken, the fee is $125.00. This $100.00 fee is the same regardless of how many legs of the skills portion (Part A) of the examination are to be taken. First time applicants must pay both the application fee and the examination fee.

Payments are due thirty (30) days before the examination, upon registration. Refunds of the examination fees will be given if the cancellation is received before the deadline of thirty (30) days prior to the examination, or the applicant may apply payment to the next scheduled test. Payments may be in the form of a check or a money order. All checks must be made payable to the Board of Certified Court Reporters.

(2) *Administration of Mississippi Court Reporters Examination.*

(a) *Skills Examination-Part A.* The skills portion of the test is a three-part dictation consisting of the following: 5 minutes of two-voice dictation of testimony (Question and Answer) given at 225 words per minute; 5 minutes of dictation of jury charge given at 200 words per minute; and 5 minutes of dictation of selected literary material given at 180 words per minute. Each of these legs will have one minute of warm up material. Each applicant shall personally take down the test, either in his/her own handwriting (pen shorthand) by machine shorthand (stenotype), or by his/her own voice (oral stenography/steno mask), and reduce to writing the take on a typewriter, word processor/computer with or without the aid of CAT (computer aided transcription) equipment. The minimum passing grade on each section of Part A of the test shall be ninety-five percent (95%) accuracy. An error shall be charged for each wrong word, each omitted word, for each added word not dictated, for each contraction where read as two words, for two words where read as a contraction, for each misspelled word, for each plural or singular where the opposite was dictated, and for each wrong number. Applicants may use a dictionary during Part A of the test. Applicants shall have seventy-five (75) minutes (1 ¼ hours) to transcribe each leg of the skills examination (Part A). If time permits, the applicant may review his/her transcript but shall use only his/her original shorthand notes (pen shorthand), steno machine notes, or voice file/tape (mask/voice writer) from which his/her transcript was prepared. If applicant passes any one leg of Part A of the test with ninety-five percent (95%) accuracy, he/she need not retake that leg on re-examination and may consider that leg passed.

Applicants for testing must furnish their own equipment and supplies for taking down and transcribing the skills portion (Part A) of the examination. Realtime translation is allowed in the dictation room. However, the screen must be situated in such a manner so that the display will not be visible to other testing candidates. No audio assist or backup of any kind is permitted during test dictation or during transcription. Candidates must disable their computer's and/or writer's microphone by either changing the settings on their computer and/or writer or by bringing an external adapter/plug.

All shorthand notes, steno machine notes, voice files/voice tapes, floppy disks, or any other external storage devices as outlined below, and any printed material becomes property of the Board of Certified Court Reporters. These must be turned in after the examination, and before leaving the testing site, the Chief Examiner shall verify that all tests from Part A (Skills Examination) are deleted from the hard drive of the applicant's word processor or computer and, if applicable, the steno machine's RAM (Random Access Memory) and any other applicable external storage devices. If an applicant's steno machine does not use a disk, e.g. a RAM memory, eliminate any jobs that may be in your steno machine's memory as you will be asked to reformat your steno machine's memory after the exam. If you do not reformat your steno machine's memory, your steno machine will be impounded by the Chief Examiner. Those using steno machines or systems with flashcards/SD cards and/or USB/flash drives will need to bring the equipment necessary to delete the flashcard/SD cards and/or USB/flash drives or will need to turn in the flashcard/SD cards and/or USB/flash drives to the Chief Examiner with a self addressed, padded, and stamped envelope for mailing. Candidates who do not bring a self-addressed stamped envelope will have to forfeit their flashcards/SD cards and/or USB/flash drives.

The approximate allowable number of errors for each leg of the skills examination is:

Testimony (Q& A)	57
Jury Charge	50
Literary	45

(b) *Written Knowledge Examination-Part B.* The written knowledge examination is a, fifty (50) question, multiple choice test based on the following areas of court reporting. Approximately thirty percent (30%) of the questions will be on reporting and ethics, thirty percent (30%) on transcription; twenty percent (20%) Mississippi court procedures, and twenty percent (20%) grammar, vocabulary, and punctuation. These approximations are intended for general guidance only. Applicants shall have forty-five (45) minutes to complete the written knowledge examination (Part B). If applicant passes Part B (Written Knowledge Examination) with a grade of 75% or more, he/she need not retake Part B and may consider that portion passed.

Materials recommended for study in preparation for the written portion of the examination include but are not limited to:

National Court Reporters Association Professional Education Series, (a) English, (b) law, and (c) medical;

National Court Reporters Association Publications: (a) Systematic Guide to Medical Terminology, (b) Grammar for Shorthand Reporters, and (c) Punctuation for Shorthand Reporters:

Mississippi Rules of Civil Procedure applying to the duties and responsibilities of court reporters;

Mississippi Rules of Appellate Procedure.

Rules and Regulations Governing Certified Court Reporters

(c) *Test Results (Skills & Written Knowledge).* Test results are mailed four (4) to six (6) weeks after the examination. No results will be given over the telephone. The written knowledge examination candidates receive the numeric scores, in addition to Pass or Fail conclusions. The skills examination candidates receive numeric scores as well as a Pass or Fail conclusion on each leg.

(d) *Appeals.* All appeals must be in writing to the Board of Certified Court Reporters and must be postmarked no more than twenty (20) days from the mailing date of the examination results. Applicants may request a regrade. The regrade fee is $50.00 and is due at the time of the appeal. (Approved effective January 1, 2012.)

XII. Discipline.

(A) *Jurisdiction.*

(1) The Board of Certified Court Reporters has jurisdiction of matters pertaining to discipline of certified court reporters, those reporters granted temporary permission as noncertified or nonresident court reporters, those holding themselves out in the State of Mississippi to be court reporters, and anyone engaged in the unauthorized practice of court reporting within the State of Mississippi. Hereafter, such proceedings shall be conducted in accordance with these rules.

(2) Nothing contained in these rules shall be construed to deny to any court such powers as may be necessary for that court to maintain control over its proceedings.

(3) The Supreme Court may, for default in the professional obligations of any court reporter or court reporter pro tempore, if such default threatens and adversely affects the efficiency of the judicial system, enter an order referring an apparent offender to the Board of Certified Court Reporters for the State of Mississippi for a disciplinary hearing as provided in these rules.

(B) *Initiation and Filing of Complaints.*

(1) Any matter touching on the misconduct of a court reporter certified or granted temporary permission by the Mississippi Board of Certified Court Reporters, those holding themselves out in the State of Mississippi to be court reporters, or anyone engaged in the unauthorized practice of court reporting within the State of Mississippi shall be called to the attention of the Board verbally or in writing. All court reporters, courts and their officers shall have the affirmative duty to notify the Board in writing of unprofessional or unethical conduct by a court reporter and any action taken by the court.

(2) The Board shall act based only upon a written complaint filed with the Board. A written complaint shall be filed on the complaint form provided by the Board. A written complaint shall contain the name, mailing address, and phone number of the complainant, the name and address of the accused court reporter, a statement of the facts of the complaint, a list of witnesses, with addresses and phone numbers if known, and copies of any statements by the witnesses and documents in support of the statement of facts of the complaint.

(3) No complaint shall be considered by the Board unless received, discovered or otherwise brought to the attention of the Board within three (3) years after the date of discovery of the facts upon which the complaint is based.

(4) If the written complaint, upon receipt, is found to be deficient, it shall be returned to the complainant with a statement of the deficiency and an opportunity to cure same. If the deficiency has not been cured within forty-five (45) days of the date upon which the same was returned to the complaining person, the complaint is subject to dismissal as provided in section "C" below.

(C) *Investigation and Hearing.*

(1) Upon receipt of a written complaint, if it appears on its face that the complaint is deficient or without merit, the Board may retire same to the file.

(2) Upon receipt of a written complaint, if it appears on its face that the complaint may have merit, the Board may conduct an investigation, either with or without notice to the accused court reporter, as in the Board's discretion appears appropriate.

(3) Results of any investigation into a written complaint shall be brought to the attention of the Board within sixty (60) days from the date the investigation was authorized by the Board.

(4) If after investigation and receipt of the report the Board determines that the matter may have merit such that a hearing is advisable, the Board shall provide the accused with a copy of the written complaint and simultaneously set a date for hearing and notify the accused reporter of the date of the hearing. Notification under this section shall be by registered, certified mail. The notice shall state the cause of any contemplated disciplinary action and the time and place of the hearing. The accused shall have fifteen (15) days from the date of notice in which to file a written response with the Board.

(5) The Chair of the Board may enlarge the time for completion of an investigation or, for good cause shown, the time for the accused to file a written response.

(6) The Board shall conduct any investigation or disciplinary hearing fairly and impartially and shall seek to elicit any and all facts which might be exculpatory or incriminatory of the accused. The Chairman, the Chair's designee, or the Board member serving as a Supreme Court Justice or trial court judge shall preside at the hearing.

(7) The accused shall appear at the hearing either with or without counsel. The accused reporter and/or counsel shall have the opportunity to present witnesses and evidence on behalf of the accused court reporter and also the opportunity to examine or cross-examine all witnesses.

(8) The Board may assess costs incurred in the investigation or hearing of any disciplinary matter as justice may require. Such costs and expenses shall include actual and necessary expenses. An accused court reporter exonerated of the charges may recover from the Board any sums assessed by and actually paid to the Board. The accused court reporter shall recover no other costs or expenses.

(D) *Grounds for Disciplinary Action.* The following shall be considered by the Board as grounds for disciplinary action against an accused court reporter:

(1) Fraud or corruption;

(2) Dishonesty;

(3) Willful or negligent violation or failure of duty;

(4) Incompetence in the performance of duties authorized by the certificate or temporary permission;

(5) Fraud or misrepresentation in obtaining certification or temporary permission;

(6) A conviction of a felony;

(7) A conviction of a criminal offense, either felony or misdemeanor, involving moral turpitude that indicates a clear and rational likelihood that the reporter will not properly discharge the responsibilities of a certified court reporter or of a court reporter granted temporary permission;

(8) Engaging in the practice of court reporting without certification or temporary permission issued by the State of Mississippi;

(9) Engaging in the practice of court reporting while certification or temporary permission is suspended;

(10) Engaging in the practice of court reporting by a method for which said court reporter has not been certified or granted temporary permission by the Board to use.

(11) Adjudication of insanity or incompetency;

(12) Violation of any rule or order promulgated by the Supreme Court governing the obligations or duties of court reporters;

(13) Unprofessional conduct; or

(14) Other sufficient cause.

(E) *Disciplinary Action.*

(1) At the conclusion of a hearing, the Board, upon majority vote, shall render a written opinion incorporating findings of fact and conclusions of law.

(2) The discipline may provide for one or more of the following:

(a) Exonerate the accused court reporter and dismiss the complaint;

(b) Publicly or privately reprimand the accused court reporter. Public reprimand shall result in the court reporter appearing before the Circuit Court of the court reporter's county of residence on the first day of a term convening next after the date the reprimand becomes final or on some other similar day when a maximum number of the Bar and public are present. When a reprimand becomes public, a copy shall be given to the person filing the complaint, the Chief Justice of the Mississippi Supreme Court, and to the judges of the circuit and chancery districts in the counties where the court reporter works, and shall be published in one or more of the following publications or websites administered by any of the following: the Mississippi Bar, the Mississippi Board of Certified Court Reporters, the Mississippi Court Reporters Association. If said court reporter was granted temporary permission as a Nonresident Court Reporter, a copy of said reprimand shall be forwarded to his/her home state of original certification and/or licensure for appropriate action to be taken therewith according to that state's governing rules and regulations. If said court reporter is a member of the National Court Reporters Association (NCRA) and/or the National Verbatim Reporters Association (NVRA), a copy of said reprimand shall be forwarded to said association(s) for appropriate action to be taken therewith according to that association's governing bylaws, rules, and regulations. A final public reprimand shall be read by the senior judge or the senior judge's designee at the time herein indicated and placed on the minutes of the Court;

(c) Suspend the accused court reporter with or without probation for a fixed period of time and specify conditions precedent to reinstatement. Orders of suspension shall immediately become matters of public record and shall be placed upon the minutes of the circuit and chancery courts in the court reporter's county of residence and in the counties where the reporter works. A copy of the Order of suspension shall be given to the person filing the complaint, the Chief Justice of the Mississippi Supreme Court, and to the judges of the circuit and chancery districts in the counties where the court reporter works, and shall be published in one or more of the following publications or websites administered by any of the following: the Mississippi Bar, the Mississippi Board of Certified Court Reporters, and the Mississippi Court Reporters Association. If said court reporter was granted temporary permission as a Nonresident Court Reporter, a copy of said Order of suspension shall be forwarded to his/her home state of original certification and/or licensure for appropriate action to be taken therewith according to that state's governing rules and regulations. If said court reporter is a member of the National Court Reporters Association (NCRA) and/or the National Verbatim Reporters Association (NVRA), a copy of said Order of suspension shall be forwarded to said association(s) for appropriate action to be taken therewith according to that association's governing bylaws, rules, and regulations. A court reporter who is suspended may not continue to work in the State of Mississippi until all conditions precedent have been met and the Board approves reinstatement;

(d) Revoke the certification or temporary permission of the court reporter. A copy of the Order of revocation shall be given to the person filing the complaint, the Chief Justice of the Mississippi Supreme Court, and to the judges of the circuit and chancery districts in the counties where the court reporter works, and shall be published in one or more of the following publications or websites administered by any of the following: the Mississippi Bar, the Mississippi Board of Certified Court Reporters, and the Mississippi Court Reporters Association. If said court reporter was granted temporary permission as a Nonresident Court Reporter, a copy of said Order of revocation shall be forwarded to his/her home state of original certification and/or licensure for appropriate action to be taken therewith according to that state's governing rules and regulations. If said court reporter is a member of the National Court Reporters Association (NCRA) and/or the National Verbatim Reporters Association (NVRA), a copy of said Order of revocation shall be forwarded to said association(s) for appropriate action to be taken therewith according to that association's governing bylaws, rules, and regulations.

(e) Impose a civil fine of five hundred dollars ($500.00) upon any person who undertakes or attempts to undertake the practice of court reporting for remuneration without having first procured a certificate or temporary permission under Sections 9-13-101 through 9-13-123; or who knowingly files false information with the Board for the purpose of obtaining certification or temporary permission under Sections 9-13-101 through 9-13-123. Each day's violation shall be considered a separate infraction. A person who is not authorized to practice court reporting under Sections 9-13-101 through 9-13-123 shall not bring or maintain an action to recover fees for court reporting services that the person performed in violation of Section 9-13-118.

(3) If the Board finds an ethical violation or instance of misconduct which does not warrant disciplinary action but should not be dismissed as being without merit, a letter of admonition shall be sent to the court reporter and a copy thereof to the person making the complaint. Informal admonition shall not be used as a substitute for, and shall not be considered as, disciplinary action. However, the fact, nature, and cause of such admonition shall be retained in the Board's file on said court reporter and shall be disclosed in any subsequent disciplinary proceedings.

(F) *Admissions and Irrevocable Resignations.*

(1) Any time after the court reporter has been formally notified as provided in (C)(4), the Board may, in its discretion and upon majority vote, accept admissions. Upon acceptance by the Board, the proceedings may be terminated. Nothing contained herein, however, shall prevent the further receipt of evidence for purposes of determining the final disposition to be made.

(2) Admissions shall fully address the factual matters alleged in the complaint, shall set out that the court reporter could not defend her/himself on the matters admitted, and that the court reporter submits to discipline on the matters admitted.

(3) Irrevocable resignations may be tendered to the Board at any time. An irrevocable resignation shall acknowledge every disciplinary matter then

pending, state that the court reporter does not desire to defend same, and request permission to resign with prejudice. Upon receipt and acceptance of the irrevocable resignation, the disciplinary proceedings then pending shall terminate and the Board shall enter an Order accepting the resignation, revoking the court reporter's certification or temporary permission and barring forever thereafter the court reporter's right to seek reinstatement or new certification or new temporary permission. An irrevocable resignation and order accepting same shall be considered disciplinary action on the matter charged. A copy of the Order of resignation shall be given to the person filing the complaint, the Chief Justice of the Mississippi Supreme Court and to the judges of the circuit and chancery districts in the counties where the court reporter works, and shall be published in one or more of the following publications or websites administered by any of the following: the Mississippi Bar, the Mississippi Board of Certified Court Reporters, and the Mississippi Court Reporters Association. If said court reporter was granted temporary permission as a Nonresident Court Reporter, a copy of said Order of resignation shall be forwarded to his/her home state of original certification and/or licensure for appropriate action to be taken therewith according to that state's governing rules and regulations. If said court reporter is a member of the National Court Reporters Association (NCRA) and/or the National Verbatim Reporters Association (NVRA), a copy of said Order of resignation shall be forwarded to said association(s) for appropriate action to be taken therewith according to that association's governing bylaws, rules, and regulations.

(4) Failure to renew a certificate or temporary permission as provided herein on or before March 1 of each calendar year shall constitute resignation by the court reporter. Any court reporter whose resignation is for failure to timely renew his/her certification or temporary permission (Noncertified Court Reporters only - Nonresident Court Reporters must reapply annually) may be reinstated as provided in these rules. (Approved effective January 1, 2012.)

JUDICIAL DECISIONS

Decided under former Rule IX (now Rule XII).
Contempt proceedings.

Decided under former Rule IX (now Rule XII).

Contempt proceedings.

Through the court reporter's repeated failure to complete trial transcripts in a timely manner, the court reporter had a serious negative effect on the efficiency of the Mississippi and the court reporter repeatedly ignored orders requiring him to complete transcripts and mandating that he turn over his tapes and notes to a replacement court reporter; thus, pursuant to Miss. R. Governing Certified Ct. Reporters IX(A)(2), the court reporter was in willful constructive criminal contempt of the Mississippi Supreme Court for his repeated failure to complywith its orders and the Supreme Court revoked his court reporter certification, ordered him to pay all costs of the the contempt proceedings including attorney's fees and court reporter's fees. In re Hoppock, 849 So. 2d 1275 (Miss. 2003).

XIII. Reinstatement.

(A) All reinstatement petitions shall be addressed to the Board, shall state the cause(s) for suspension or revocation, give the names and current address of all persons, parties, firm, or legal entities who suffered pecuniary loss due to the improper conduct of the reporter, the making of full amends and restitution, the reasons justifying reinstatement, and requisite moral character and proof by sworn affidavit that he/she has retained the professional skills required for original certification or temporary permission to be reinstated to the privilege of being a certified court reporter in the State of Mississippi or being granted temporary permission as a noncertified court reporter in the State of Mississippi.

(B) No court reporter whose certification or temporary permission has been revoked shall be reinstated except upon Petition to the Board. The petition for reinstatement shall not be filed until two (2) years after the date of the order of revocation.

(C) A court reporter whose certificate or temporary permission has been suspended for a period of less than six (6) months shall be automatically reinstated upon expiration of the period of suspension. No court reporter whose certification or temporary permission has been suspended for a period of six (6) months or longer shall be reinstated except upon Petition to the Board. The petition for reinstatement shall not be filed until the expiration of the period of suspension. No petition for reinstatement shall be filed until the conditions of suspension have been met.

(D) Reinstatement to reporting following any discipline shall be only upon proof of compliance with any such sanctions and approval of the Board.

(E) A court reporter who has been convicted of a felony offense shall be ineligible for reinstatement.

(F) A court reporter who has been placed on probation is subject to having the probation revoked upon proof that the court reporter has failed to meet the terms of the probation.

(G) Prior to reinstatement of any court reporter eligible for reinstatement, the Board may require the court reporter to take the written knowledge examination (Part B) as prepared by the Mississippi Board of Certified Court Reporters and as set forth in Rule XI(2)(b) and obtain a score of not less than seventy-five (75). A court reporter whose certification or temporary permission has been revoked may also be required to take and pass all three (3) legs of the skills portion of the examination (Part A) currently used to certify court reporters in the State of Mississippi and as set forth in Rule XI(2)(a).

(H) If a petition for reinstatement is denied, no other petition shall be filed until one (1) year after the date of the denial of the petition for reinstatement.

(I) All petitions for reinstatement shall be public record, Rule XIII notwithstanding, and shall be published in one or more of the following publications or websites administered by any of the following: the Mississippi Bar, the Mississippi Board of Certified Court Reporters, and the Mississippi Court Reporters Association.

(J) All decisions of the Board denying a petition for reinstatement of Certification, Temporary Permission as a Noncertified Court Reporter, or Temporary Permission as a Nonresident Court Reporter shall be made in writing and the reasons for denying the petition shall be included in the decision of the Board. The court reporter shall be notified within thirty (30) days of the Board's decision. The decision of the Board shall be final. (Approved effective January 1, 2012.)

XIV. Discipline in another jurisdiction.

(A) When any court reporter in the State of Mississippi, whether with or without certification or temporary permission issued by the Board, is subjected to disciplinary action and/or sanctions in another jurisdiction, such sanction shall be grounds for disciplinary action in this state. Certification of such sanction by the appropriate authority of such jurisdiction to the Board or to the Mississippi Supreme Court shall be conclusive evidence of the guilt of the offense or unprofessional conduct on which said action and/or sanction was ordered, and it will not be necessary to prove the grounds for such offense in the disciplinary proceeding in this state.

(B) The sole issue to be determined in the disciplinary proceeding in this state shall be the extent of the final discipline to be imposed on the court reporter, which may be more or less severe than the discipline imposed by the other jurisdiction. (Approved effective January 1, 2012.)

XV. Confidentiality.

(C) All members of the Board, their assistants, staff and employees, members of the Mississippi Bar, the Mississippi Court Reporters Association, all clerks and receivers, and court reporters hired by the Board to report any proceedings are strictly enjoined to keep and maintain confidential all things arising under these rules and all proceedings thereon. The accused court reporter may make such public statement or disclosure as he/she desires. The period of confidentiality shall end, however, upon the accused court reporter making any public statement or disclosure about a proceeding under these rules.

(D) The Board shall have authority to share information with law enforcement officials concerning any alleged violation of any federal or state criminal laws by a court reporter.

(E) These rules shall not prohibit any complainant, the accused court reporter, or any witnesses from discussing publicly the existence of the proceeding(s) under these rules or from disclosing any information relating thereto, including the disclosing of any documents involved in the disciplinary proceeding(s). (Approved effective January 1, 2012.)

XVI. Immunity from civil suit.

(A) All complaints filed, statements made, documents, or other tangible things produced pursuant hereto shall be absolutely privileged, and no civil suit predicated therein may be instituted, and each person, firm, association, or legal entity filing such a complaint shall be immune from any civil suit pending thereon.

(B) The members of the Board and all their assistants, staff, employees, and receivers shall be immune from civil suit for any conduct arising out of the performance of their official duties. Every person shall be immune from civil suit for all evidence or testimony given or submitted in the course of any investigation, investigatory hearing, formal hearing, or review proceedings held and conducted under these rules. (Approved effective January 1, 2012.)

XVII. Costs and expenses.

(A) The Board may assess costs incurred in the investigation and hearing held in any disciplinary matter as justice may require.

(B) Such costs and expenses shall include the actual and reasonably necessary expenses of the Board. (Approved effective January 1, 2012.)

XVIII. Repealer and severability.

(A) If any of these rules or sections, or any part thereof, are declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

(B) Unless the contrary intent shall clearly appear in every amendment hereinafter made, each and every amendment made hereafter shall be read and construed as though the provisions hereof form an integral part of such amendments, whether expressly set out therein or not. (Approved effective January 1, 2012.)

Certified Court Reporters

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COURT ANNEXED MEDIATION RULES FOR CIVIL LITIGATION

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These rules shall govern the referral of cases by the Circuit, Chancery and County courts of this state to mediation.

I. POLICY

It shall be the policy of the courts of the State of Mississippi (1) to encourage the peaceable resolution of disputes and early settlement of pending litigation by voluntary action of the parties, and (2) to identify cases appropriate for referral to mediation pursuant to the guidelines set out in these rules.

II. CASES APPROPRIATE FOR REFERRAL TO MEDIATION

All Civil cases shall be considered appropriate for referral to mediation in the discretion of the court, giving consideration to such facts as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interest of the parties in pursuing mediation, the availability of mediation, and the likelihood of settlement by mediation.

III. REFERRAL OF CIVIL CASES

Civil Cases may be referred to mediation in the following manner:

A. Any circuit, chancery and county court in this state may, either on its own motion or on the motion of any party, determine that a case is appropriate for mediation. A court may not order a case to mediation more than one time.

B. If the court on its own motion determines that a pending dispute is appropriate for referral to mediation, the court shall enter its order which shall direct the clerk or court administrator to notify the parties to complete a mediation as set forth in this rule within a time period as the court may specify.

Any party, within 10 days of the date of entry of the court's order, may file written objection to the referral order and request a hearing by the court.

C. Any party may apply to the courts of this state for referral of a case to mediation by motion upon giving notice to all other parties. A hearing may be conducted on the motion at which the court shall make a determination as to whether mediation is appropriate and if the case is referred shall enter its appropriate order.

D. Upon the court entering its final order referring a case to mediation all objections having been heard by the court, the parties shall have a period of 20 days from the date of entry of the court's final order to schedule the mediation. If the parties are unable to agree on a convenient date and mediator, the clerk or administrator of the court shall assign a date, time, location and mediator to conduct the mediation procedure, which assignment will be binding on the parties upon their being notified by the clerk or court administrator of the court. Any objections any party may have with regard to the date, time or location assigned for the mediation or the selection of the mediator shall be filed with the court in writing within 10 days of entry of the notice of the clerk or court administrator.

IV. AUTHORITY TO SETTLE

The attorneys for all parties must appear at the mediation unless otherwise ordered by the court. Each party including a person with authority to settle the case on the party's behalf shall be present during the mediation unless otherwise ordered by the court.

V. MEDIATION

A. Mediation is a forum in which an impartial person, the mediator, facilitates communications between parties to promote reconciliation, settlement or understanding among them.

B. A mediator may not impose his or her own judgment on the issues for that of the parties.

VI. SANCTIONS

If a party or a party's attorney fails to obey an order made pursuant to this rule, fails to appear at the scheduled mediation, or fails to participate, the other party shall report such circumstances to the court. The court may make such orders with regard thereto as are just within the discretion of the court, including requiring the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's and mediator's fees; provided; however, the mediator shall not be called as a witness or otherwise be required to give evidence at a sanctions hearing.

VII. CONFIDENTIALITY OF COMMUNICATIONS IN MEDIATION

A. Except as provided by subsections C and D below, a communication relating to the subject matter of any civil dispute made by a participant in a mediation is confidential, is not subject to disclosure, and may not be used as evidence against the participant in any judicial or administrative proceeding.

B. Mediation is confidential and no record shall be made. The participants or the mediator may not be required to testify in any proceedings relating to matters occurring during the mediation session, nor shall they be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

C. Any oral communication or written material used in or made a part of a mediation is admissible or discoverable only if it is admissible or discoverable independent of the mediation.

D. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

VIII. EFFECT OF WRITTEN SETTLEMENT AGREEMENT

A. If the parties reach a settlement and execute a written agreement disposing of the dispute or any part thereof; the agreement is enforceable in the same manner as any other written contract.

B. The court in its discretion may incorporate the terms of the agreement in the court's final order disposing of the case.

IX. COST OF MEDIATION

The fees and expenses of the mediation shall be established by agreement between the mediator and the parties charged with those fees and expenses. Unless otherwise agreed to by the parties or ordered by the court, the party seeking mediation shall pay the fees and expenses of the mediation. When mediation is ordered by the court on its own motion, the court shall allocate the fees and expenses of the mediation, or such fees and expenses may be taxed as costs of the litigation. The attorney's fees of the parties shall not be included in the fees and expenses of mediation.

X. ADMINISTRATIVE FUNCTIONS CONCERNING MEDIATION

The following procedures will be utilized for the conduct of administrative functions necessary to make mediators available as needed for the referral of cases.

A. The Mississippi Supreme Court assisted by the Mississippi Bar will establish qualifications for inclusion on a list of mediators and prepare such list. The list shall be distributed to all circuit, county and chancery court clerks. The Mississippi Bar staff will provide administrative assistance. An administration fee for inclusion on the list may be established and charged to the approved mediators. Courts and parties are encouraged, but not required, to select mediators from this list.

B. Administration will be conducted through a committee designated the Court Annexed Mediation Committee which will be composed of the Officers and Executive Committee members of the Alternative Dispute Resolution Section of The Mississippi Bar, ex officio.

C. The Court Annexed Mediation Committee, with the advice of the Supreme Court, shall determine, on at least a semi-annual basis, whether there is an adequate number of qualified mediators to meet the demands of this Plan. If there is a determination that there is a need for training of additional mediators, The Mississippi Bar shall train or provide training to persons to serve as mediators. Persons receiving training elsewhere may qualify for inclusion on the list if said training meets the qualifications established by the Mississippi Supreme Court.

D. Within 60 days following the adoption of this plan, the Mississippi Bar shall submit to the Supreme Court proposed qualifications for mediators and administrative procedures for the implementation of the plan. Within 60 days following the appointment of members to the Annexed Mediation Committee, the committee will report to the Supreme Court the names, addresses and qualifications of mediators, and will update the list from time to time as needed.

[Amended effective July 1, 2009 to revise the composition of the committee; amended effective January 11, 2007, to increase the term of committee members to three years; Amended effective January 26, 2006, to remove limitation of number of members on the Court Annexed Mediation Committee.]

XI. EFFECTIVE DATE OF PLAN

This mediation plan shall become effective upon adoption by the Supreme Court of the qualifications for mediators and administrative procedures identified in Part X above.

XII. TERMINATION OF EXISTING PILOT MEDIATION PROGRAM

The pilot mediation program adopted by the Supreme Court on June 20, 1996 by order dated June 12, 1996 will terminate on its existing expiration date or upon the effective date of the plan herein adopted, which ever is the earlier.

XIII. SUSPENSION AND TERMINATION OF THE PLAN

The plan may be suspended or terminated by the Supreme Court upon a determination by the Court that there is an inadequate number of qualified mediators available to meet the demand without undue delay in the disposition of cases, or for such other reason as the Court may deem appropriate. (Amended effective June 27, 2002; amended effective September 30, 2004 to remove the automatic termination provision from the rules.)

XIV. REPORTING REQUIREMENTS

The following procedures will be utilized to gather information concerning cases ordered to mediation pursuant to these Rules.

A. Each circuit and chancery court clerk shall file, on a monthly basis, a written report with the Administrative Office of Courts reporting the hereafter specified information concerning cases ordered to mediation by an order of that court entered pursuant to these rules. The report shall be filed no later than the last day of each month following the month for which activity is being reported. The report shall state (a) the number of cases ordered to mediation; (b) the general subject matter of the cases; and (c) the information obtained from mediators concerning those cases pursuant to paragraph B of this Rule. Reports concerning county court cases ordered to mediation shall be filed by the circuit court clerk in like manner.

B. Each mediator selected by the parties in a matter ordered to mediation or appointed by the Court pursuant to Rule 3D shall, within 10 days of the conclusion of the mediation, report to the clerk of the court whether the case was settled. The report shall not disclose any particulars of the settlement. (Amended November 2, 2000.)

XV. STANDARDS OF CONDUCT FOR MEDIATORS

The following procedures will be utilized to gather information concerning cases ordered to mediation pursuant to these Rules.

Comment

> These standards are drawn from Model Standards of Conduct for Mediators ...promulgated by the American Arbitration Association and the Alternate Dispute Resolution Section of the American Bar Association. Certain adjustments have been made in the Model Standards to conform this Rule XV to the text and practices set forth in the other sections of these Court Annexed Mediation Rules for Civil Litigation.

A. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Having complied in good faith with any order entered under Rule III, any party may withdraw from mediation at any time.

Comment

> The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.
>
> A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but is a good practice for the mediator to make the parties aware of the importance

of consulting other professionals, where appropriate, to help them make informed decisions.

Mediation under these rules is conducted in association with proceedings pending in the courts of the state, pursuant to orders of the courts in which the subject cases are pending as described in Rule III. Mediation is commenced by an order of the assigning court, which must be complied with in good faith. Failure to abide by such an order is subject to sanctions under Rule VI. Therefore, prior to withdrawing from or terminating a mediation, the parties must have fully performed her or his obligation under such an order and under the rules.

B. Impartiality: A Mediator shall Conduct the Mediation in an Impartial Manner.

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

Comment

A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that mediators serve impartially.

A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

C. Conflicts of Interest: A Mediator shall Disclose All Actual and Potential Conflicts of Interest Reasonably Known to the Mediator.

After disclosure, the mediator shall decline to mediate unless all parties the mediator, or the court has assigned the mediator by order. The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation.

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed, and the parties shall immediately notify the court that the mediator has so declined.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

Comment

A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations which maintain rosters of qualified professionals.

Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

Although it is desirable that all parties accept the mediator, when the mediator is designated by order of the court under Rule III, the mediator shall conduct the mediation, unless she or he has a conflict of interest, or is relieved by the court.

D. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

Comment

Mediators should have information available for the parties regarding their relevant training, education and experience.

The requirements for appearing on the list of mediators must be made public and available to interested persons.

When mediators are appointed by a court, the appointing court shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

E. Confidentiality: A Mediator shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.

The mediator shall follow the requirements of Rule VII regarding confidentiality. The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the provisions of Rule VII, the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by rule, law or other public policy.

Comment

Within the limitations of Rule VII, the parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator, or the appointing court may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.

In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.

Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.

Confidentiality should not be construed to limit or prohibit the effective monitoring, research, or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediation, and interviews with participants.

F. Quality of the Process: A Mediator shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when they will reach an agreement or terminate a mediation.

Comment

A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.

Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.

The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.

The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.

A mediator shall withdraw from a mediation when incapable of serving or when unable to remain impartial. If a mediator withdraws, the parties shall immediately report her or his with drawl to the appointing court.

A mediator shall withdraw from a mediation or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.

Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

G. Advertising and Solicitation: A Mediator shall be Truthful in Advertising and Solicitation for Mediation

Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results. Further, advertising or other communications with the public by attorneys who offer themselves as mediators are governed by the Rules of Professional Conduct.

Comment

It is imperative that communication with the public educate and instill confidence in the process.

In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

H. Fees: A Mediator shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

Comment

A mediator who withdraws from a mediation should return any unearned fee to the parties.

A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.

Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.

A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

I. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.

Comment

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

(Amended effective June 27, 2002.)

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RULES AND REGULATIONS FOR CERTIFICATION AND CONTINUING EDUCATION FOR MISSISSIPPI COURT ADMINISTRATORS

Adopted Effective December 12, 2000

Rule
1. Scope and exemptions.
2. Continuing education requirement.
3. Certification.
4. Noncompliance sanctions.

Cross References — Court administrators, see Mississippi Code of 1972 § 9-17-1 et seq.

Rule 1. Scope and exemptions.

The Rules concerning Continuing Education (CE) shall apply to every Administrator of any designation of the Circuit, Chancery, County, and Youth Courts of the State of Mississippi. The Rules concerning Court Administrator Certification, pursuant to Miss. Code Ann. § 9-1-36(4), shall apply to Circuit and Chancery Court Administrators appointed on or after October 1, 1996. All Court Administrators in the Circuit, Chancery, County and Youth Courts, irrespective of date of hire, are strongly encouraged to be certified through the program described, as developed by the Mississippi Administrative Office of Courts ("AOC").

Rule 2. Continuing education requirement.

Each Court Administrator, Deputy Court Administrator, or Assistant Court Administrator of a Circuit, Chancery, County or Youth Court in the State of Mississippi shall attend a minimum of twelve (12) actual hours of AOC-approved Continuing Education at the Spring and Fall Court Administrators Conference (or AOC-approved substitute), each calendar year beginning January 1, 2001, provided the funding for the named Conferences is available through the Mississippi Judicial College or other source and the courses are offered.

Regulations

(2.1) The number of hours required means that the Administrator must actually attend twelve (12) instructional hours of AOC-approved CE per year with no credit given for introductory remarks, meal breaks, or business meetings.

(2.2) An instructional hour will in all events be an hour containing at least fifty (50) minutes of instruction time.

(2.3) Administrators who have a physical disability which makes attendance at CE programs inordinately difficult may file a request with the AOC for a permanent substitute program in lieu of attendance and shall therein set out Continuing Education plans tailored to their specific interests and physical ability. The AOC shall review and approve or disapprove such plans on an individual basis and without delay, after submitting the request to the Mississippi Court Administrators Association's Education Committee for its input.

(2.4) Other requests for substituted compliance, partial waivers, or other exemptions for hardship or extenuating circumstances may be granted by the AOC upon written application of the Administrator and may likewise be reviewed by the AOC, after submission to the Mississippi Court Administrators Association's Education Committee for its recommendation.

(2.5) A Court Administrator may receive credit for a maximum of six (6) hours per year of attendance at an AOC-approved program other than the Spring and Fall Court Administrators Conferences, as defined by and with prior approval of the AOC.

(2.6) Credit will be given only for Continuing Education activities approved by the AOC. Such approval for substitute seminars should be sought and granted prior to the occurrence of the activity but may be given retroactively. Should a Court Administrator be required to miss a mandatory seminar, the Court Administrator shall, in writing, inform the AOC of the reasons for non-attendance within ten (10) working days after the conclusion of the seminar, unless excused by the AOC.

Rule 3. Certification.

All Circuit and Chancery Court Administrators hired in their present position from and after October 1, 1996 are required to be certified according to the Rules set forth in this section. The program for certification shall be incorporated into the Spring and Fall Court Administrator Conferences, or any other AOC-approved seminars, with all topics and topical content on the program agenda to be developed by the Mississippi Court Administrators Association's Education Committee, with the approval of the AOC.

Regulations

(3.1) All AOC Court Administrators, Circuit and Chancery, hired on or after October 1, 1996, shall be required to be certified, within four (4) years of the institution of this program, or, if hired at a later date, within four (4) years after the date of hire. County and Youth Court Administrators, and Circuit and Chancery Court Administrators hired before October 1, 1996, will be eligible to be certified and are strongly encouraged to do so.

(3.2) The Certification Program will span four (4) consecutive Spring and Fall Conference programs, over a span of two (2) years, with the certification issued upon the successful completion of the twenty-four (24) hours required by the AOC. Participants in the Certification Program will be tested at the conclusion of the seminar, with a passing score necessary in order to receive certification credit for the hours provided at the meeting.

(3.3) Topics and participants eligible for credit for certification must be approved by the AOC. Upon completion of the initial certification, Administrators will receive renewal on an annual basis, subject to completing the annual Continuing Education requirements set out in Rule 2.

(3.4) Specifics of the Certification Program may be set by the AOC, insomuch as the policies do not conflict with these rules.

Rule 4. Noncompliance sanctions.

(4.1) As soon as practicable after January 1 of each year, commencing January 1, 2001, the Mississippi Judicial College shall forward to the AOC the name of each Administrator who is required to comply and has not complied with Rules 1 and 2 of the Mississippi Rules for Certification and Continuing Education of Mississippi Court Administrators. Compliance with Rule 3 will be tracked by the AOC. Within a reasonable time after the receipt by the AOC of the names, the AOC shall send a Notice of Noncompliance to the Administrator, asking the Administrator to respond within thirty (30) days, informing the AOC why the Administrator should not be reported to the Supreme Court for sanction. A copy of said notice shall be mailed to the Administrator's supervising judge(s). In response to the Notice of Noncompliance, such Administrator shall furnish the AOC with an affidavit that contains the following information, and any other information which may be considered relevant:

(a) An indication that the administrator has complied with the requirement prior to expiration of the thirty (30) day period, or

(b) A recitation of an excuse for failure to comply with the requirements because of hardship or other good cause.

(4.2) Within a reasonable time after the expiration of the time allowed to respond to the Notice of Noncompliance, the AOC shall notify the Supreme Court of Mississippi of each Administrator who fails to file an affidavit or files an affidavit which does not set forth a valid reason for noncompliance, and the AOC may recommend appropriate sanctions to the Mississippi Supreme Court, with said recommendations possibly including a reprimand, or other such actions deemed appropriate by the Supreme Court, including, but not limited to, dismissal and/or financial withholding in the case of Circuit and Chancery Court Administrators. The Supreme Court shall then issue a Notice to Show Cause for the Court Administrator to file a response, under oath, outlining any reasons that the recommended sanction should not be imposed. The Supreme Court shall then consider the recommendation of the AOC and any filed response by the Court Administrator, and shall forthwith adjudicate the issue and, if applicable, impose sanctions.

(4.3) At any time after the Notice of Noncompliance to the Supreme Court is filed and prior to the Notice to Show Cause being issued by the Supreme Court, an Administrator may file with the AOC an affidavit indicating compliance with the Rules for Certification and Continuing Court Education for Mississippi Court Administrators, and if satisfactory to the AOC, it shall forthwith notify the Supreme Court that the Court Administrator has fulfilled the requirements of these Rules and Regulations.

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RULES FOR ELECTRONIC AND PHOTOGRAPHIC COVERAGE OF JUDICIAL PROCEEDINGS

The Mississippi Rules for Electronic and Photographic Coverage of Judicial Proceedings are adopted effective April 17, 2003 for proceedings conducted from and after July 1, 2003.

Rule
1. General.
2. Definition.
3. Electronic Media Coverage Allowed.
4. Restrictions.
5. Notice.
6. Decorum.
7. Objections.
8. Impermissible use of material.
9. Enforcement and sanctions.
10. Expiration (Repealed).

Rule 1. General.

Electronic media coverage of judicial proceedings in Mississippi Courts shall be governed by the following rules. These rules apply to the Supreme Court, Court of Appeals, chancery courts, circuit courts, and county courts and may be cited as MREPC. (Adopted effective April 17, 2003.)

Rule 2. Definition.

(a) "Media" shall mean all persons and organizations engaging in news gathering or reporting and includes any newspaper, radio or television station or network, news service, magazine, trade paper, professional journal, and other news reporting or news gathering agencies.

(b) "Electronic media coverage" and "electronic coverage" shall mean any reporting, recording, broadcasting, narrowcasting, cablecasting, and webcasting of court proceedings by the media using television, radio, photographic, recording, or other electronic device.

(c) "Judicial proceedings" shall mean any trial, pre-trial hearings, post-trial hearings and appellate arguments. (Adopted effective April 17, 2003.)

Rule 3. Electronic Media Coverage Allowed.

Electronic media coverage of public judicial proceedings shall be allowed in the appellate and trial courts of record in this state subject to the conditions below. The presiding justice or judge has the discretion to limit or terminate electronic coverage at any time during the proceedings if the court deems such necessary and in the interest of justice to protect the rights of the parties or witnesses, or the dignity of the court, or to assure orderly conduct of the proceedings.

(a) *Authority of presiding justice or judge.* All electronic coverage is subject at all time to the authority of the presiding justice or judge to (i) control the conduct of the proceedings, (ii) ensure decorum and prevent distraction, and (iii) ensure fair administration of justice in the pending case. The rights of the parties to a fair adjudication are recognized as paramount. It is the responsibility of the media to so arrange and operate equipment in order to comply with these rules.

(b) *Persons other than media representatives.* These rules do not allow the use of electronic devices by attorneys and persons other than media representatives except as may be allowed by the court.

(c) *Coverage of certain matters prohibited.* Electronic coverage of the following matters is expressly prohibited unless the presiding justice or judge shall allow the coverage by order: divorce; child custody; support; guardianship; conservatorship; commitment; waiver of parental consent to abortion; adoption; delinquency and neglect of minors; determination of paternity; termination of parental rights; domestic abuse; motions to suppress evidence; proceedings involving trade secrets; and in camera proceedings.

(d) *Coverage of certain persons prohibited.* Electronic coverage of the following categories of witnesses is expressly prohibited: police informants, minors, undercover agents, relocated witnesses, victims and families of victims of sex crimes, and victims of domestic abuse. (Adopted effective April 17, 2003.)

Rule 4. Restrictions.

(a) The location of equipment and personnel necessary for electronic media coverage of judicial proceedings shall be at a place either inside or outside the courtroom so as to be minimally intrusive to the proceedings. Only equipment which does not produce distracting sound or light shall be employed to cover judicial proceedings. No flash or strobe lighting shall be used. All running wires shall be securely taped to the floor. No other artificial lighting device of any kind shall be employed in connection with electronic coverage unless otherwise authorized by the court. Matters covered by this sub-part are subject to the discretion of the presiding judge and may be relaxed so long as the coverage does not result in distraction of the proceedings.

(b) No members or potential members of the jury may be recorded or shown at any time prior to their dismissal, nor shall the jury selection process be subject to electronic coverage. The presiding judge shall inform all potential jurors at the beginning of the jury selection process of the restrictions of this particular provision.

(c) No audio recording is permitted of off-the-record conferences in the courtroom between the court and counsel, or between counsel and co-counsel, or between counsel and clients or witnesses.

(d) Judicial proceedings held in chambers and proceedings generally closed to the public shall not be subject to electronic coverage.

(e) Electronic media equipment shall not be taken into the courtroom, relocated, or removed from the designated media area except prior to convening of the judicial proceedings, during recesses, and after adjournment for the day. This prohibition shall not apply to small, handheld electronic devices.

(f) Unless otherwise allowed by the presiding judge, no more than one television camera or video recorder, one audio system for radio broadcasting, and one still photographer shall be allowed in any judicial proceeding. If pooling arrangements are employed, such data or information is to be available equally to all pool participants, and the pool representative shall charge no fees or expenses to the other pool participants. The pool representative is not to be given any economic or coverage advantage over the other pool participants. Any pooling arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding justice or judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding justice or judge shall exclude all contesting media personnel from a proceeding.

(g) The Chief Justice of the Supreme Court, and the Chief Judge of the Court of Appeals may waive these restrictions with respect to judicial proceedings in the Supreme Court and in the Court of Appeals, respectively. (Amended effective December 9, to give the presiding judge discretion as to application of technical limitations of coverage; amended effective September 29, 2005.)

Rule 5. Notice.

Media representatives who propose to engage in electronic coverage of a judicial proceeding shall notify the clerk and the court administrator of the court of such intention at least forty-eight (48) hours prior to the commencement of the proceeding. The presiding justice or judge may shorten or waive the time for advance notice. (Adopted effective April 17, 2003.)

Rule 6. Decorum.

The decorum and dignity of the court, the courtroom, and the judicial proceedings must be maintained at all times. Court customs shall be followed including appropriate attire. Movement in the courtroom during the proceedings shall be limited and may be completely prohibited except during breaks or recesses. Disruption of proceedings will not be permitted. (Adopted effective April 17, 2003.)

Rule 7. Objections.

Any party may object to electronic coverage by written motion, which may be supported by affidavits. Such motions shall be filed no later than fifteen (15) days prior to commencement of the judicial proceedings, unless good cause exists to shorten the time for filing. (Adopted effective April 17, 2003.)

Rule 8. Impermissible use of material.

No material gathered by electronic media shall be part of the official court record of the judicial proceedings covered unless admitted into evidence. The official court record of any judicial proceeding is the transcript of the original notes and all exhibits introduced into evidence in the proceeding. (Adopted effective April 17, 2003.)

Rule 9. Enforcement and sanctions.

A violation of these rules may be sanctioned by measures deemed appropriate by the court. (Adopted effective April 17, 2003.)

Rule 10. Expiration (Repealed).

Rule 10, providing for expiration of the Rules for Electronic and Photographic Coverage of Judicial Proceedings on December 31, 2004 was repealed effective December 9, 2004. (Adopted effective April 17, 2003 for proceedings occurring from July 1, 2003; amended to remove expiration date, December 9, 2004.)

COMMENT

Section 3B(12) of the Code of Judicial Conduct prohibits broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto except as authorized by rule or order of the Supreme Court. Also, Rule 1.04 of the Uniform Rules of Circuit and County Court allows cameras only "in accordance with the Code of Judicial Conduct." Thus, electronic coverage is allowed only for special purposes authorized in Section 3B(12), or under these Rules for Electronic and Photographic Coverage of Judicial Proceedings (MREPC.)

The MREPC recognize that the use of cameras, television, broadcast, and other electronic media to cover court proceedings presents special considerations unique to their use. In addressing these considerations, the rule recognizes both that in certain public proceedings such coverage can be intimidating and unnecessarily intrusive into the lives of citizens, even where there is no expectation of privacy, and that these special logistical problems are attendant to the use of new technologies.

In MREPC 2(b), "electronic media coverage" and "electronic coverage" are defined to include the use of still cameras.

The MREPC neither limit nor expand the authority of law for general closing of proceedings, the general exclusion of the public and the media from the courtroom, or the sealing of documents. These broader limitations on public access areas are addressed in the Constitution and statutes of the state as well as the decisions of the courts. Article 3, Section 26 of the Mississippi Constitution provides that the court may in certain specified cases, in its discretion, exclude from the courtroom all persons except such as are necessary in the conduct of the trial. Examples of proceedings for which statutes either mandate or permit closed hearings include certain divorce proceedings (Miss. Code Ann. § 93-5-21), those for waiver of parental consent to an abortion for a minor (Miss. Code Ann. § 41-41-55), proceedings raising the sexual conduct of a complaining witness in a rape case (Miss. Code. Ann. § 97-3-68), and Youth Court Proceedings (Miss. Code Ann. § 43-21-203). The closing of proceedings generally and procedures for notice and hearing prior to closing are addressed in *Gannett River States Pub. Co. v. Hand*, 571 So. 2d 941 (Miss. 1990) and *In re Memphis Publish-*

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Adopted effective April 17, 2003.

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FRAP 32. Form of briefs, appendices, and other papers.
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FRAP 32.1. Citing Judicial Dispositions.
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FRAP 36. Entry of judgment; notice.
FRAP 37. Interest on judgment.
FRAP 38. Frivolous appeal — Damages and costs.
FRAP 39. Costs.
Circuit Rule 39. Costs.
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FRAP 41. Mandate: contents; issuance and effective date; stay.
Circuit Rule 41. Issuance of mandate; stay of mandate.
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FRAP 42. Voluntary dismissal.
Circuit Rule 42. Voluntary dismissal.
FRAP 43. Substitution of parties.
FRAP 44. Case involving a constitutional question when the United States or the relevant state is not a party.
FRAP 45. Clerk's duties.
Circuit Rule 45. Duties of clerks.
I.O.P.

FRAP 46. Attorneys.
Circuit Rule 46. Attorneys.
I.O.P.

FRAP 47. Local rules by courts of appeals.
Circuit Rule 47. Other Fifth Circuit Rules.
FRAP 48. Masters.
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I.O.P.
APPENDIX OF FORMS
Form
1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court
2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court
3. Petition for Review of Order of an Agency, Board, Commission or Officer
4. Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis
5. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel
6. Certificate of Compliance with Rule 32(a)

Form
7. Form 7. Declaration of Inmate Filing

Editor's Note — There are no 5th Cir. R. 1-2, 4, 6-7, 13-14, 16, 18-20, 23-24, 33, 36-38, 43-44, and 48. The Fifth Circuit Rules are numbered to correspond to the appropriate Federal Rules of Appellate Procedure that they supplement.

Analysis of key amendments to the Federal Rules of Appellate Procedure and the Fifth Circuit Rules that became effective December 1, 2002.

Fed. R. App. P. 4 Appeal as of Right

4(a)(5) Extension of Time to File Notice of Appeal

Presently in this circuit (and several others), a party filing a motion for extension of time to file notice of appeal during the first 30 days (60 days if the United States is a party in a civil case) after judgment is entered has to show good cause. If the motion is filed during the next 30 days, the party has to show excusable neglect. The new Rule 4(a)(5) will allow a showing of either good cause or excusable neglect regardless of when the motion for extension of time is filed.

4(a)(7) Entry Defined

The Rules Advisory Committee recognized several conflicts among the circuits in dealing with the interplay of Rule 4(a)(7) of the Fed. R. App. P. and Rule 58 of the Fed. R. Civ. P. Both rules have been changed to eliminate some of the conflicts.

Fed. R. Civ. P. 58 is being amended to provide that orders on motions for judgment (Rule 50(b)), to amend or make additional findings of fact (Rule 52(b)), for attorney fees (Rule 54), for new trial or to alter or amend judgment (Rule 59), or for relief from judgment (Rule 60) do not need to be set out in a separate document. Fed. R. App. P. 4(a)(7) will provide that if the Civil Rules do not require a separate document, the Appellate Rules do not either. In these cases, judgment is entered for purposes of appeal when the judgment or order is entered on the civil docket pursuant to Fed. R. Civ. P. 79(a).

Next, the rule addresses the situation where a separate document is necessary but the district court does not prepare one. The amendment provides that judgment will be deemed entered 150 days after the judgment or order was entered on the civil docket. The time for filing post-judgment motions and notice of appeal will begin running from that date.

The amendment also gives the appellant an absolute right to proceed on appeal without awaiting the formal entry of judgment on a separate document. The appellee cannot prevent the appeal from going forward by objecting that the district court did not enter a separate document. In sum, an a who waives the separate document requirement may file notice of appeal anytime within 150 days after entry of the judgment on the docket and the validity of the appeal will not be affected.

4(b)(5) Appeal in Criminal Cases

The filing of a motion to correct a sentence under Fed. R. Crim. P. 35(a) suspends the time to file a notice of appeal from a criminal conviction. Fed. R. App. P. 4 is changed so the time for a notice of appeal in a criminal case continues to run despite the filing of a motion to correct sentence under Fed. R. App. P. 35(a).

Fed. R. App. P. 5 Appeal by Permission; 21 Extraordinary Writs; 5th Cir. R. 5; 215(c); 21(d) Form of Papers

Papers filed for permission to appeal or for an extraordinary writ are considered "other papers" for purposes of Fed. R. App. P. 32(c)(2). That is, no cover is required if the caption and signature page together contain the information required by Rule 32(a)(2), and the length limits of Rule 32(a)(7) do not apply. The rule puts a 20-page limit on any papers filed in proceedings under Rule 5 and a 30-page limit on pleadings under Rule 21. 5th Cir. R. 5 and 21 are changed to be consistent with the Federal rules.

5TH Cir. R. 9.5 Release Pending Appeal

The way of computing time under Fed. R. App. P. 26 is being changed, *see* below. To accommodate the change, 5th Cir. R. 9.5 is changed to reflect that a written response to a motion for release pending appeal is due 7 *working* days, rather than 7 *calendar* days, after service of the memorandum or application.

5th Cir. R. 15.1 Agency Review Procedures

The party petitioning for review or enforcement of an agency order must attach to the petition a copy of the order or orders to be reviewed.

Fed. R. App. P. 24 Proceedings in Forma Pauperis

24(a)(2), (3) Leave to Proceed in Forma Pauperis

Rule 24 is being amended to remove conflicts with the Prison Litigation Reform Act of 1995 (PLRA). The rule applies only to inmates proceeding in forma pauperis in civil actions and appeals. Under the PLRA, prisoners granted IFP status must pay a portion of the filing fees initially and have the remainder deducted from their prison trust accounts as funds become available. The rule is amended to allow a person proceeding IFP to do so without prepaying or giving security for fees and costs "unless a statute [such as the PLRA] provides otherwise."

Similarly, when the district court grants IFP status, the person normally retains that status on appeal without having to reapply. However, the PLRA requires that IFP status be granted for each proceeding. The amended rule allows persons to proceed on appeal IFP if they did so in the district court "unless a statute provides otherwise."

Fed. R. App. P. 25 Filing and Service

25(c) Manner of Service

"Personal service" may be accomplished by delivery to a responsible person at counsel's office, or by using electronic service if the person being served consents in writing. Electronic service will be complete on transmission of the document, unless the sending party receives notification that the document was not received.

The rule also allows courts to permit parties to use the court's transmission equipment to complete electronic service. This court has no plans at this time to provide this service.

25(b) Proof of Service

The certificate of service will be considered deficient if service was by electronic or facsimile means but the certificate does not contain the electronic or facsimile address.

5th Cir. R. 25

25.2 Electronic Filing

The courts are in the process of developing and testing software to allow documents to be filed electronically. Rules and procedures will be developed by the clerk to govern electronic filing. The required standard for documents will be Adobe Portable Document Format (PDF). Electronic filing will not be implemented in the immediate future, so there is no need to go into detail about it now.

25.3 Electronic Noticing

In certain cases or classes of cases, the clerk will be authorized to serve all papers, including opinions, electronically on any party who consents. Parties must agree that electronic notice is the only notice the clerk will provide.

Fed. R. App. P. 26 Computing and Extending Time

26(a) Computing Time

The Appellate Rules will be brought into line with the Civil and Criminal Rules by providing that intermediate Saturdays, Sundays, and legal holidays will not be counted if the time permitted for acting is less than 11 days, unless the time is stated in calendar days. Some adjustments are made to time limits, either by changing the amount of time allowed or by removing the "calendar days" restriction.

26(c) Additional Time after Service

Ordinarily, if a paper is delivered on other than the date contained in the certificate of service, the receiving party gets 3 extra days to respond; if delivery is on the date of the certificate of service, no additional time is allowed. When service is by electronic means, the receiving party always will be entitled to 3 extra days to respond.

Fed. R. App. P. 26.1 Corporate Disclosure Statement

This circuit uses a Statement of Interested Persons, which is broader in scope than the Corporate Disclosure Statement. Therefore, although the contents of Fed. R. App. P. 26.1 are amended significantly, they have no relevance to Fifth Circuit practice. Instead, you should refer to the changes to 5th Cir. R. 28.2.1, discussed below.

Fed. R. App. P. 27 Motions

27(a)(3)(A) Response

A response to a motion must be filed within 8, rather than 10, days after service, as calculated under Fed. R. App. P. 26(a).

27(a)(4) Reply

A reply to a response to a motion must be filed 5 days after service of the response, as calculated under Fed. R. App. P. 26(a).

27(d)(1)(B) Covers

Motions do not require covers, but if you use one it must be white.

5th Cir. R. 27.1, 27.4

The current placement of the 5th Cir. R. implies that a certificate of conference is required only on motions for extension of time. The certificate requirement is moved to 5th Cir. R. 27.4 to make it clear that all motions must contain a certificate of conference.

Fed. R. App. P.28 Briefs

28(j) Citation of Supplemental Authority

The amended rule permits parties to bring supplemental authorities to the court's attention after briefs have been filed and permits argument on how the authority is relevant. Such supplements are limited to 350 words. The word count applies to the body of the letter-from the first word after the salutation to the last word before the complimentary closing-and includes footnotes. A response is subject to the same limitations.

5th Cir. R. 28

28.2.1 Certificate of Interested Persons

Parties must update the certificate whenever the required information changes.

The form for reporting on interested persons has changed slightly to insure that all entities covered by the rule are included.

28.6 Signing the Brief

The 5th Cir. R. currently requires that all briefs be signed by an attorney or a party appearing pro se. This requirement now will appear in Fed. R. App. P. 32(d), SO it is removed from the local rule.

5th Cir. R. 30 Record Excerpts

30.1.2 Filing

The appellant must serve 4 paper copies of the Record Excerpts. If the clerk permits filing of the Record Excerpts in electronic form, they may be filed on a diskette like those used for computer-generated briefs. The parties will be able to consent in writing to accept service of the Record Excerpts by any electronic means that the parties agree upon. If the clerk permits additional Record Excerpts to be filed, the same provisions apply.

Fed. R. App. P.31 Serving and Filing Briefs

31(b) Number of Copies

The amendment clarifies that *all* parties, including any unrepresented parties, must be served with two copies of a party's briefs.

5th Cir. R. 31 Briefs

31.1 Number of Copies; Computer Generated Briefs

All computer-generated briefs must be accompanied by a computer-readable diskette copy. The brief must be prepared in Adobe Portable Document Format (PDF).

31.3 Time for Mailing

The rule adds the provision that, if electronic filing of briefs is permitted, appellee has 33 days from the date on the certificate of service on appellant's brief to complete electronic filing of its brief with the clerk.

Fed. R. App. P.32 Form of Briefs, Appendices, and Other Papers

32(a)(2) Form of Brief

If a party files a supplemental brief, the cover must be tan. This does not apply to the additional briefs that must be filed if this court grants rehearing briefs will have the same color covers, red or blue, as the initial briefs.

32(a)(7)(C)(ii) Certificate of Compliance (see 5th Cir. R. 32.3)

The rule provides for a Form 6 for use as a certificate of compliance with the type volume limits for briefs. Accordingly, reference to the form previously used by the clerk's office is removed from the 5th Cir. R. Filers should use Form 6.

32(c)(2)(A) Other Papers

If a cover is used on a petition for panel rehearing or for hearing or rehearing en banc, it must be white.

32(d) Signature; 5th Cir. R. 32.5

For some years, the Fifth Circuit has required that counsel or unrepresented parties sign briefs. This year the Federal Rules add the same requirement, so the provision is removed from the 5th Cir. R.

Fed. R. App. P. 41 Mandate

41(b) When Issued

Because of the change in the manner of computing time periods less than 11 days, the rule is amended to provide that mandates will issue on the later of 7 *calendar* days after 1) expiration of the time to file a petition for rehearing; 2) entry of an order denying panel rehearing or rehearing en banc; or 3) entry of an order denying a motion to stay mandate. This court will continue to issue mandates on the 8th calendar day after the time for filing a petition for rehearing expires, or after entry of an order denying the petition.

Fed. R. App. P. 44 Constitutional Questions

44(b) State Statute

Rule 44(a) describes the procedure to be followed when a party challenges the constitutionality of an act of Congress when the United States is not a party. Section (b) is added to prescribe the same procedure when a party challenges the constitutionality of a state statute when the state or its representative is not a party.

5th Cir. R. 47 Other Fifth Circuit Rules

47.8.2(a) Attorney's Fees and Expenses Under the Equal Access to Justice Act

The Administrative Office of the United States Courts has abolished Form A.O. 291. Consequently, the requirement that the form be submitted with applications for an award of fees and expenses under 28 U.S.C. § 2412(d)(l)(B) is removed.

RESEARCH REFERENCES

Practice References. The *Practitioner's Guide to the U.S. Court of Appeals for the Fifth Circuit* can be found under the Forms, Fees & Guides tab, in the Guides folder, on the Fifth Circuit Court of Appeals' website located at www.ca5.uscourts.gov.

Rahdert and Roth, Appeals to the Fifth Circuit Manual (Michie).

Federal Circuit and District Court Rules — 5th Circuit (CD Rom) (Matthew Bender).

TITLE I. APPLICABILITY OF RULES

FRAP 1. Scope of rules; definition; title.

(a) *Scope of rules.*

(1) These rules govern procedure in the United States courts of appeals.

(2) When these rules provide for filing a motion or other document in the district court, the procedure must comply with the practice of the district court.

(b) *Definition.* In these rules, 'state' includes the District of Columbia and any United States commonwealth or territory.

(c) *Title.* These rules are to be known as the Federal Rules of Appellate Procedure. (Amended effective December 1, 2010.)

FRAP 2. Suspension of rules.

On its own or a party's motion, a court of appeals may — to expedite its decision or for other good cause — suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

TITLE II. APPEAL FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

FRAP 3. Appeal as of right — How taken.

(a) *Filing the notice of appeal.*

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. § 1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by Rules 5 and 6, respectively.

(b) *Joint or consolidated appeals.*

(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) *Contents of the notice of appeal.*

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X";

(B) designate the judgment, order, or part thereof being appealed; and

(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer's spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(5) Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

(d) *Serving the notice of appeal.*

(1) The district clerk must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record — excluding the appellant's — or, if a party is proceeding pro se, to the party's last known address. When a defendant in a criminal case appeals, the clerk must also serve a copy of the notice of appeal on the defendant, either by personal service or by mail addressed to the defendant. The clerk must promptly send a copy of the notice of appeal and of the docket entries — and any later docket entries — to the clerk of the court of appeals named in the notice. The district clerk must note, on each copy, the date when the notice of appeal was filed.

(2) If an inmate confined in an institution files a notice of appeal in the manner provided by Rule 4(c), the district clerk must also note the date when the clerk docketed the notice.

(3) The district clerk's failure to serve notice does not affect the validity of the appeal. The clerk must note on the docket the names of the parties to whom the clerk mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) *Payment of fees.* Upon filing a notice of appeal, the appellant must pay the district clerk all required fees. The district clerk receives the appellate docket fee on behalf of the court of appeals.

JUDICIAL DECISIONS

Named parties.
Timeliness.

Named parties.

Specificity requirement regarding designation of appealing parties in notice of appeal is inapplicable to notice of appeal from bankruptcy court judgment or order. In re Case, 937 F.2d 1014 (5th Cir. 1991).

Supreme Court's ruling in class action that use of phrase "et al." fails to provide required notice under Rule 3(c) to opposing parties or court was distinguishable in case where there were only two plaintiff-appellants, their notice of appeal named one appellant followed by "et al.," and it also stated that "Plaintiffs do hereby appeal," since "Plaintiffs" could include only two plaintiff appellants, and "et al." could mean only appellant not specifically named. Pope v. Mississippi Real Estate Comm'n, 872 F.2d 127 (5th Cir. 1989).

Father who had sued in his individual capacity and as representative of his children did not fail to comply with Rule 3(c) when he failed to name children in notice of appeal; father had sued on children's behalf as their representative and next friend, so that there was no omission of "party" from notice but only failure to designate all capacities in which father brought suit, and it was clear to appellee that father desired to appeal. King v. Otasco, Inc., 861 F.2d 438 (5th Cir. 1988).

Timeliness.

Criminal defendant's motion for appointment of counsel on appeal, which was filed before entry of judgment, when taken together with district court's orders, was sufficient and timely notice of appeal, even though defendant filed actual notice of appeal eleven days after order denying his motion for new trial. United States v. Sacerio, 952 F.2d 860 (5th Cir. 1992).

Notice of appeal that was filed after announcement of defendant's conviction but before announcement of his sentence did not preclude appeal of his sentence per se, since no prejudice was asserted or shown by government. United States v. Winn, 948 F.2d 145 (5th Cir. 1991), cert. denied, 503 U.S. 976, 112 S. Ct. 1599, 118 L. Ed. 2d 313 (1992).

Circuit Rule 3. Filing fee.

When the notice of appeal is filed, the $505 fees established by 28 U.S.C. §§ 1913 and 1917 must be paid to the district court clerk. After the Fifth Circuit receives a duplicate copy of a notice of appeal, the clerk will send counsel or a party notice advising of other requirements of the rule. No additional fees are required. Failure to pay the fees does not prevent the appeal from being docketed, but is grounds for dismissal under 5th Cir. R. 42.

FRAP 3.1. Appeal from a judgment of a magistrate judge in a civil case.

[Abrogated].

FRAP 4. Appeal as of right — When taken.

(a) *Appeal in a civil case.*

(1) *Time for filing a notice of appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf —including all instances in which the

United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing before entry of judgment.* A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) *Multiple appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a motion on a notice of appeal.*

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure - and does so within the time allowed by those rules - the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment — but before it disposes of any motion listed in Rule 4(a)(4)(A) — the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment altered or amended upon such a motion, must file a notice of appeal, or an amended notice of appeal — in compliance with Rule 3(c) — within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for extension of time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the time to file an appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a);

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

(ii) if Federal Rule of Civil Procedure 58(a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79(a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58(a)(1) does not affect the validity of an appeal from that judgment or order.

(b) *Appeal in a criminal case.*

(1) *Time for filing a notice of appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) *Filing before entry of judgment.* A notice of appeal filed after the court announces a decision, sentence, or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) *Effect of a motion on a notice of appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order — but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) — becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective — without amendment — to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for extension of time.* Upon a finding of excusable neglect or good cause, the district court may — before or after the time has expired, with or without motion and notice — extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Federal Rule of Criminal Procedure 35(a), nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) *Entry defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) *Appeal by an inmate confined in an institution.*

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with 28 U.S.C. § 1746 — or by a notarized statement — setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) *Mistaken filing in the court of appeals.* If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted. (Amended effective December 1, 2005; amended effective December 1, 2009; amended effective December 1, 2010; amended effective December 1, 2017.)

JUDICIAL DECISIONS

Government officers.
Habeas corpus.
Interlocutory orders.
Multiple appeals.
Service by mail.
Timeliness.
Tolling of time period.

Government officers.

Notwithstanding that plaintiff purports to sue defendant government officers only in their individual capacity, 60-day filing period of Rule 4(a) applies whenever alleged grievance arises out of governmental activity if (a) defendant officers were acting under color of office, (b) defendant officers were acting color of law or lawful authority, or (c) any party in case is represented by government attorney. Williams v. Collins, 728 F.2d 721 (5th Cir. 1984).

Habeas corpus.

In appeal from denial of habeas corpus petition, where no final judgment has been entered as separate document and thus there is no timely notice of appeal, jurisdictional prerequisites for appeal have not been met and appeal should be dismissed. Townsend v. Lucas, 745 F.2d 933 (5th Cir. 1984).

Interlocutory orders.

Settlement order constituting judgment on merits was final and time for appeal commenced on its entry despite fact that issue of liability for attorney's fees remained open; however, judgment holding party liable for attorney's fees but deferring decision on amount of award was interlocutory in nature and party was not required to file its notice of appeal of liability judgment until amount of award was determined and party's motion to reconsider that judgment was denied. Echols v. Parker, 909 F.2d 795 (5th Cir. 1990).

If absolute immunity claims of FBI agents were subject to interlocutory appeal, appeal should have been taken after district court's denial of that claim; accordingly, appeal is untimely when filed outside time limit of Rule 4, despite assertion that interlocutory appeals are permissive and not subject to that time limit. Kenyatta v. Moore, 744 F.2d 1179 (5th Cir. 1984), cert. denied, 471 U.S. 1066, 105 S. Ct. 2141, 85 L. Ed. 2d 498 (1985).

Multiple appeals.

Purpose of Rule 4(a)(3) is to allow all parties opportunity to see and respond to actions of their adversaries. Lee v. Coahoma County, 937 F.2d 220 (5th Cir. 1991).

Service by mail.

Thirty-day period for filing notice of appeal under FRAP 4(a) may not be extended by FRCP 6(e), which provides additional time for service by mail. In re Arbuckle, 988 F.2d 29 (5th Cir. 1993).

Timeliness.

Criminal defendant's motion for appointment of counsel on appeal, which was filed before entry of judgment, when taken together with district court's orders, was sufficient and timely notice of appeal, even though defendant filed actual notice of appeal eleven days after order denying his motion for new trial. United States v. Sacerio, 952 F.2d 860 (5th Cir. 1992).

Notice of appeal that was filed after announcement of defendant's conviction but before announcement of his sentence did not preclude appeal of his sentence per se, since no prejudice was asserted or shown by government. United States v. Winn, 948 F.2d 145 (5th Cir. 1991), cert.

denied, 503 U.S. 976, 112 S. Ct. 1599, 118 L. Ed. 2d 313 (1992).

District Court order granting plaintiff in civil rights action leave to proceed on appeal in forma pauperis entered well past both delay period for timely notice of appeal and also past additional 30 day period for extension of time does not affect untimeliness of appeal. Briggs v. Lucas, 678 F.2d 612 (5th Cir. 1982).

Tolling of time period.

Motion to reconsider judgment will be considered FRCP 59(e) motion (and thus, toll applicable time period for filing notice of appeal) even where request for reconsideration encompasses only that part of judgment regarding attorney's fees. Ramsey v. Colonial Life Ins. Co. of Am., 12 F.3d 472 (5th Cir. 1994), cert. denied, 519 U.S. 870, 117 S. Ct. 185, 136 L. Ed. 2d 124 (1996).

FRAP 5. Appeal by permission.

(a) *Petition for permission to appeal.*

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the circuit clerk with proof of service on all other parties to the district-court action.

(2) The petition must be filed within the time specified by the statute or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 4(a) for filing a notice of appeal.

(3) If a party cannot petition for appeal unless the district court first enters an order granting permission to do so or stating that the necessary conditions are met, the district court may amend its order, either on its own or in response to a party's motion, to include the required permission or statement. In that event, the time to petition runs from entry of the amended order.

(b) *Contents of the petition; answer or cross-petition; oral argument.*

(1) The petition must include the following:

(A) the facts necessary to understand the question presented;

(B) the question itself;

(C) the relief sought;

(D) the reasons why the appeal should be allowed and is authorized by a statute or rule; and

(E) an attached copy of:

(i) the order, decree, or judgment complained of and any related opinion or memorandum, and

(ii) any order stating the district court's permission to appeal or finding that the necessary conditions are met.

(2) A party may file an answer in opposition or a cross-petition within 10 days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) *Form of papers; number of copies; length limits.* All papers must conform to Rule 32(c)(2). An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case. Except by the court's permission, and excluding the accompanying documents required by Rule 5(b)(1)(E):

(1) a paper produced using a computer must not exceed 5,200 words; and

(2) a handwritten or typewritten paper must not exceed 20 pages.

(d) *Grant of permission; fees; cost bond; filing the record.*

(1) Within 14 days after the entry of the order granting permission to appeal, the appellant must:

(A) pay the district clerk all required fees; and

(B) file a cost bond if required under Rule 7.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The district clerk must notify the circuit clerk once the petitioner has paid the fees. Upon receiving this notice, the circuit clerk must enter the appeal on the docket. The record must be forwarded and filed in accordance with Rules 11 and 12(c). (Amended effective December 1, 2018.)

Circuit Rule 5. Length of petition.

Length. The certificate of interested persons required by 5th Cir. R. 28.2.1 does not count toward the page limit.

FRAP 5.1. Appeal by leave under 28 U.S.C. § 636(c)(5).

[Abrogated].

FRAP 6. Appeal in a bankruptcy case.

(a) *Appeal From a Judgment, Order, or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case.* An appeal to a court of appeals from a final judgment, order, or decree of a district court exercising jurisdiction under 28 U.S.C. § 1334 is taken as any other civil appeal under these rules.

(b) *Appeal From a Judgment, Order, or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.*

(1) *Applicability of other rules.* These rules apply to an appeal to a court of appeals under 28 U.S.C. § 158(d)(1) from a final judgment, order, or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction under 28 U.S.C. § 158(a) or (b), but with these qualifications:

(A) Rules 4(a)(4), 4(b), 9, 10, 11, 12(c), 13-20, 22-23, and 24(b) do not apply;

(B) the reference in Rule 3(c) to "Form 1 in the Appendix of Forms" must be read as a reference to Form 5;

(C) when the appeal is from a bankruptcy appellate panel, "district court," as used in any applicable rule, means "appellate panel"; and

(D) in Rule 12.1, "district court" includes a bankruptcy court or bankruptcy appellate panel.

(2) *Additional rules.* In addition to the rules made applicable by Rule 6(b)(1), the following rules apply:

(A) *Motion for rehearing.*

(i) If a timely motion for rehearing under Bankruptcy Rule 8022 is filed, the time to appeal for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after the district court or bankruptcy appellate panel announces or enters a judgment, order, or decree — but before disposition of the motion for rehearing — becomes effective when the order disposing of the motion for rehearing is entered.

(ii) If a party intends to challenge the order disposing of the motion — or the alteration or amendment of a judgment, order, or decree upon the motion — then the party, in compliance with Rules 3(c) and 6(b)(1)(B), must file a notice of appeal or amended notice of appeal. The notice or amended notice must be filed within the time prescribed by Rule 4 — excluding Rules 4(a)(4) and 4(b) — measured from the entry of the order disposing of the motion.

(iii) No additional fee is required to file an amended notice.

(B) *The record on appeal.*

(i) Within 14 days after filing the notice of appeal, the appellant must file with the clerk possessing the record assembled in accordance with Bankruptcy Rule 8009 — and serve on the appellee — a statement of the issues to be presented on appeal and a designation of the record to be certified and made available to the circuit clerk.

(ii) An appellee who believes that other parts of the record are necessary must, within 14 days after being served with the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included.

(iii) The record on appeal consists of:

- the redesignated record as provided above;
- the proceedings in the district court or bankruptcy appellate panel; and
- a certified copy of the docket entries prepared by the clerk under Rule 3(d).

(C) *Making the record available.*

(i) When the record is complete, the district clerk or bankruptcy-appellate-panel clerk must number the documents constituting the record and promptly make it available to the circuit clerk. If the clerk makes the record available in paper form, the clerk will not send documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals, unless directed to do so by a party or the circuit clerk. If unusually bulky or heavy exhibits are to be made available in paper form, a party must arrange with the clerks in advance for their transportation and receipt.

(ii) All parties must do whatever else is necessary to enable the clerk to assemble the record and make it available. When the record is made available in paper form, the court of appeals may provide by rule or order that a certified copy of the docket entries be made available in place of the redesignated record. But any party may request at any time during the pendency of the appeal that the redesignated record be made available.

(D) *Filing the record.* When the district clerk or bankruptcy-appellate-panel clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(c) *Direct Review by Permission Under 28 U.S.C. § 158(d)(2).*

(1) *Applicability of other rules.* These rules apply to a direct appeal by permission under 28 U.S.C. § 158(d)(2), but with these qualifications:

(A) Rules 3-4, 5(a)(3), 6(a), 6(b), 8(a), 8(c), 9-12, 13-20, 22-23, and 24(b) do not apply;

(B) as used in any applicable rule, “district court” or “district clerk” includes — to the extent appropriate — a bankruptcy court or bankruptcy appellate panel or its clerk; and

(C) the reference to “Rules 11 and 12(c)” in Rule 5(d)(3) must be read as a reference to Rules 6(c)(2)(B) and (C).

(2) *Additional rules.* In addition, the following rules apply:

(A) *The record on appeal.* Bankruptcy Rule 8009 governs the record on appeal.

(B) *Making the record available.* Bankruptcy Rule 8010 governs completing the record and making it available.

(C) *Stays pending appeal.* Bankruptcy Rule 8007 applies to stays pending appeal

(D) *Duties of the circuit clerk.* When the bankruptcy clerk has made the record available, the circuit clerk must note that fact on the docket. The date noted on the docket serves as the filing date of the record. The circuit clerk must immediately notify all parties of the filing date.

(E) *Filing a representation statement.* Unless the court of appeals designates another time, within 14 days after entry of the order granting permission to appeal, the attorney who sought permission must file a statement with the circuit clerk naming the parties that the attorney represents on appeal. (Amended April 25, 2014, effective December 1, 2014.)

FRAP 7. Bond for costs on appeal in a civil case.

In a civil case, the district court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 8(b) applies to a surety on a bond given under this rule.

FRAP 8. Stay or injunction pending appeal.

(a) *Motion for stay.*

(1) *Initial motion in the district court.* A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a bond or other security provided to obtain a stay of judgment; or

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) *Motion in the court of appeals; conditions on relief.* A motion for the relief mentioned in Rule 8(a)(1) may be made to the court of appeals or to one of its judges.

(A) The motion must:

(i) show that moving first in the district court would be impracticable; or

(ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested and state any reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(E) The court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) *Proceeding against a security provider.* If a party gives security with one or more security providers, each provider submits to the jurisdiction of the district court and irrevocably appoints the district clerk as its agent on whom any papers affecting its liability on the security may be served. On motion, a security provider's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district clerk, who must promptly send a copy to each security provider whose address is known.

(c) *Stay in a criminal case.* Rule 38 of the Federal Rules of Criminal Procedure governs a stay in a criminal case. (Amended effective July 1, 1986; amended effective December 1, 1995; amended effective December 1, 1998; amended effective December 1, 2018.)

JUDICIAL DECISIONS

In general.
Applicability.
Merits.

In general.

Federal Rules of Appellate Procedure, Rule 8(a), only authorizes stays or injunctions pending appeal, but does not provide for dissolution of prohibitory injunction which is, in effect, vacation of injunction entered by district court. Frith v. Blazon-Flexible Flyer, Inc., 512 F.2d 899 (5th Cir. 1982).

Applicability.

Rule 8(a) only authorizes stays pending appeals to Court of Appeals; it is inapplicable where there is no appeal pending from District Court to Court of Appeals, but only request for reversal of District Court's interlocutory order denying stay pending appeal to District Court of bankruptcy court's order confirming plan of reorganization. In re Barrier, 776 F.2d 1298 (5th Cir. 1985).

Merits.

Movant need not, in every instance, show that he will probably succeed on merits in order for court to grant stay or injunction pending appeal. Laurenzo v. Mississippi High Sch. Activities Ass'n, 708 F.2d 1038 (5th Cir. 1983).

Circuit Rule 8. Stay or injunction pending appeal.

Procedures in Death Penalty Cases Involving Applications for Immediate Stay of Execution and Appeals in Matters in Which the District Court Has Either Entered or Refused To Enter a Stay

8.1 Documents Required. Non-death penalty cases will be handled as described in Fed. R. App. P. 8. Death penalty cases arising from actions brought under 28 U.S.C. §§ 2254 and 2255 will be processed under the procedures found in this rule. The appellant must file 4 copies of the motion for stay and attach, to each, legible copies of the documents listed below. If the appellant asserts there is insufficient time to file a written motion, the appellant must deliver to the clerk 4 legible copies of each of the listed documents as soon as possible. If the appellant cannot attach or deliver any listed document, a statement why it cannot be provided must be substituted. The documents required are:

(a) The complaint or petition to the district court;

(b) Each brief or memorandum of authorities filed by both parties in the district court;

(c) The opinion giving the district court's reasons for denying relief;

(d) The district court judgment denying relief;

(e) The application to the district court for a stay;

(f) The district court order granting or denying a stay, and the statement of reasons for its action;

(g) The certificate of appealability or, if there is none, the order denying a certificate of appealability;

(h) A copy of each state or federal court opinion or judgment involving any issue presented to this court or, if the ruling was not made in a written opinion or judgment, a copy of the relevant portions of the transcript.

8.1.1 If the state indicates that it does not oppose the stay, and the applicant states this fact in the application, these documents do not need to be filed with the application but must be filed within 14 days after the application is filed.

8.1.2 If the appellant raises an issue that was not raised before the district court or has not been exhausted in state court, the applicant must give the reasons why prior action was not taken and why a stay should be granted.

8.2 Panels. Death penalty case matters are handled by special panels selected in rotation from the court's regular screening panels. See 5th Cir. R. 27.2.3 for handling applications for certificates of appealability.

8.3 Motions To Vacate Stays. If the district court enters an order staying execution of a judgment, the party seeking to vacate the stay will attach 4 copies of each of the documents required by 5th Cir. R. 8.1 to the motion.

8.4 Emergency Motions. Emergency motions or applications, whether addressed to the court or to an individual judge, must be filed with the clerk rather than with an individual judge. If there is insufficient time to file a motion or application in person, by mail, or by fax, counsel may communicate with the clerk by telephone and thereafter must file the motion in writing with the clerk as soon as possible. The motion, application, or oral communication must contain a brief account of the prior actions of this or any other court or judge to which the motion or application, or a substantially similar or related petition for relief, was submitted.

8.5 Merits. The parties must address the merits of each issue presented by an application. The panel may allow additional time to permit the parties adequate opportunity to do so.

8.6 Consideration of Merits. If a certificate of appealability has been granted, the panel assigned to decide a motion for a stay of a state court judgment must, before denying a stay, consider and expressly rule on the merits of the appeal, unless the panel finds that the appeal is frivolous and entirely without merit.

8.7 Vacating Stays. The panel assigned to an appeal must consider the merits before vacating a stay of execution, unless the panel rules the appeal is frivolous and entirely without merit.

8.8 Mandate. The panel may order the mandate issued instantly or after such time as it may fix.

8.9 Stays of Execution Following Decision. Stays to permit the filing and consideration of a petition for a writ of certiorari ordinarily will not be granted. The court must determine whether there is a reasonable probability that 4 members of the Supreme Court would consider the underlying issues sufficiently meritorious for the grant of certiorari and whether there is a substantial possibility of reversal of its decision, in addition to a likelihood that irreparable harm will result if its decision is not stayed.

8.10 Time Requirements for Challenges to Death Sentences and/or Execution Procedures. Inmates sentenced to death who wish to appeal an adverse judgment by the district court on a first petition for writ of habeas corpus, who seek permission to file a successive petition, or who seek to challenge their convictions, sentences, or the execution procedures (including but not limited to a suit filed pursuant to 42 U.S.C. § 1983), must exercise reasonable diligence in moving for a certificate of appealability, for permission to file a second or successive habeas petition, or in filing a notice of appeal from an adverse judgment of the district court in any other type of proceeding, and a stay of execution with the clerk of this court at least 7 days before the scheduled execution. Counsel who seek a certificate of appealability, permission to file a successive petition, or an appeal from a district court judgment less than 7 days before the scheduled execution must attach to the proposed filing a detailed explanation stating under oath the reason for the delay. If the motions are filed less than 7 days before the scheduled execution, the court may direct counsel to show good cause for the late filing. If counsel cannot do so, counsel will be subject to sanctions.

If the state asks this court to vacate a district court order staying an execution, counsel for the state will file the state's appeal and application for relief from the stay as soon as practicable after the district court issues its order. Any unjustified delay by the state's counsel in seeking relief in this court will subject counsel to sanctions. (Amended Dec. 1, 2002; Dec. 1, 2006; As amended Dec. 1, 2009.)

FRAP 9. Release in a criminal case.

(a) *Release before judgment of conviction.*

(1) The district court must state in writing, or orally on the record, the reasons for an order regarding the release or detention of a defendant in a criminal case. A party appealing from the order must file with the court of appeals a copy of the district court's order and the court's statement of reasons as soon as practicable after filing the notice of appeal. An appellant who questions the factual basis for the district court's order must file a transcript of the release proceedings or an explanation of why a transcript was not obtained.

(2) After reasonable notice to the appellee, the court of appeals must promptly determine the appeal on the basis of the papers, affidavits, and parts of the record that the parties present or the court requires. Unless the court so orders, briefs need not be filed.

(3) The court of appeals or one of its judges may order the defendant's release pending the disposition of the appeal.

(b) *Release after judgment of conviction.* A party entitled to do so may obtain review of a district-court order regarding release after a judgment of conviction by filing a notice of appeal from that order in the district court, or by filing a motion in the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). The papers filed by the party seeking review must include a copy of the judgment of conviction.

(c) *Criteria for release.* The court must make its decision regarding release in accordance with the applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

Circuit Rule 9. Release in a criminal case.

9.1 Release Before Judgment of Conviction. The clerk's office will advise counsel of the requirements of this rule after receiving a copy of a notice of appeal from the district court from an order respecting release entered prior to a judgment of conviction (Fed. R. App. P. 9(a)), or on counsel's advice a notice of appeal has been or will be filed.

Four copies of a memorandum must be filed within 10 days of the filing of the notice of appeal, clearly setting out the nature and circumstances of the offense charged and why the order respecting release is unsupported by the district court proceedings.

9.2 Release After Judgment of Conviction. The original and 3 copies of an application regarding release pending appeal from a judgment of conviction (Fed. R. App. P. 9(b)) must be filed with the clerk of this court.

(a) The application for release must contain:

(1) The appellant's name;

(2) The district court docket number;

(3) The offense of which appellant was convicted; and

(4) The date and terms of sentence.

(b) The application must also contain:

(1) The legal basis for the contention that appellant is unlikely to flee or pose a danger to the safety of any other person or the community;

(2) An explanation why the district court's findings are clearly erroneous; and

(3) The issues to be raised on appeal that present substantial questions of law or fact likely to result in reversal or an order for a new trial on all counts of the indictment on which incarceration has been imposed, with pertinent legal argument establishing that the questions are substantial.

9.3 Required Documents. A copy of the district court's order respecting release pending trial or appeal, containing the written reasons for its ruling, must be appended to the memorandum or the application filed under 5th Cir. R. 9.1 or 9.2.

(a) If the appellant questions the factual basis of the order, a transcript of the district court proceedings on the motion for release must be filed with this court. If the transcript is not filed with the memorandum or application, the appellant must attach a court reporter's certificate verifying that the transcript has been ordered and that satisfactory financial arrangements have been made to pay for it, together with the transcript's estimated date of completion.

(b) If the appellant cannot obtain a transcript of the proceedings, the appellant must state in an affidavit the reasons why not.

9.4 Service. A copy of the memorandum or application filed under 5th Cir. R. 9.1 or 9.2 must be hand-delivered to government counsel or served by other expeditious method.

9.5 Response. The opposing party must file a written response to all requests for release within 10 days after service of the memorandum or application. (Amended Dec. 1, 2002; July 15, 2003; As amended Dec. 1, 2009.)

FRAP 10. The record on appeal.

(a) *Composition of the record on appeal.* The following items constitute the record on appeal:

(1) the original papers and exhibits filed in the district court;

(2) the transcript of proceedings, if any; and

(3) a certified copy of the docket entries prepared by the district clerk.

(b) *The transcript of proceedings.*

(1) *Appellant's duty to order.* Within 14 days after filing the notice of appeal or entry of an order disposing of the last timely remaining motion of a type specified in Rule 4(a)(4)(A), whichever is later, the appellant must do either of the following:

(A) order from the reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary, subject to a local rule of the court of appeals and with the following qualifications:

(i) the order must be in writing;

(ii) if the cost of the transcript is to be paid by the United States under the Criminal Justice Act, the order must so state; and

(iii) the appellant must, within the same period, file a copy of the order with the district clerk; or

(B) file a certificate stating that no transcript will be ordered.

(2) *Unsupported finding or conclusion.* If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion.

(3) *Partial transcript.* Unless the entire transcript is ordered:

(A) the appellant must — within the 14 days provided in Rule 10(b)(1) — file a statement of the issues that the appellant intends to present on the appeal and must serve on the appellee a copy of both the order or certificate and the statement;

(B) if the appellee considers it necessary to have a transcript of other parts of the proceedings, the appellee must, within 14 days after the service of the order or certificate and the statement of the issues, file and serve on the appellant a designation of additional parts to be ordered; and

(C) unless within 14 days after service of that designation the appellant has ordered all such parts, and has so notified the appellee, the appellee may within the following 14 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) *Payment.* At the time of ordering, a party must make satisfactory arrangements with the reporter for paying the cost of the transcript.

(c) *Statement of the evidence when the proceedings were not recorded or when a transcript is unavailable.* If the transcript of a hearing or trial is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement must be served on the appellee, who may serve objections or proposed amendments within 14 days after being served. The statement and any objections or proposed amendments must then be submitted to the district court for settlement and approval. As settled and approved, the statement must be included by the district clerk in the record on appeal.

(d) *Agreed statement as the record on appeal.* In place of the record on appeal as defined in Rule 10(a), the parties may prepare, sign, and submit to the district court a statement of the case showing how the issues presented by the appeal arose and were decided in the district court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it — together with any additions that the district court may consider necessary to a full presentation of the issues on appeal — must be approved by the district court and must then be certified to the court of appeals as the record on appeal. The district clerk must then send it to the circuit clerk within the time provided by Rule 11. A copy of the agreed statement may be filed in place of the appendix required by Rule 30.

(e) *Correction or modification of the record.*

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

(3) All other questions as to the form and content of the record must be presented to the court of appeals.

JUDICIAL DECISIONS

Reconstruction of transcript.

Trial court did not err in reconstructing transcript of criminal trial, following the theft of court reporter's notes and tapes, to supply omission and correct record. United States v. Hedge, 462 F.2d 220 (5th Cir. 1972).

Circuit Rule 10. The record on appeal.

10.1 Appellant's Duty to Order the Transcript. The appellant's order of the transcript of proceedings, or parts thereof, contemplated by Fed. R. App. P. 10(b), must be on a form prescribed by the clerk. Counsel will furnish a copy of the order form to the clerk and to the other parties set out in Fed. R. App. P. 10(b). If no transcript needs to be ordered, appellant must file with the clerk a copy of a certificate to that effect that counsel served on the parties under Fed. R. App. P. 10(b).

10.2 Form of Record. The district court must furnish the record on appeal to this court in paper form, and in electronic form whenever available. The paper and electronic records on appeal must be consecutively numbered and paginated. The paper record must be bound in a manner that facilitates reading.

I.O.P.

The district court will furnish a transcript order form, required by this court, when the notice of appeal is filed. Once counsel completes the transcript order, forwards it to the reporter, and makes adequate financial arrangements, counsel's responsibility under Fed. R. App. P. 10 and 11 is fulfilled.

FRAP 11. Forwarding the record.

(a) *Appellant's duty.* An appellant filing a notice of appeal must comply with Rule 10(b) and must do whatever else is necessary to enable the clerk to assemble and forward the record. If there are multiple appeals from a judgment or order, the clerk must forward a single record.

(b) *Duties of reporter and district clerk.*

(1) *Reporter's duty to prepare and file a transcript.* The reporter must prepare and file a transcript as follows:

(A) Upon receiving an order for a transcript, the reporter must enter at the foot of the order the date of its receipt and the expected completion date and send a copy, so endorsed, to the circuit clerk.

(B) If the transcript cannot be completed within 30 days of the reporter's receipt of the order, the reporter may request the circuit clerk to grant additional time to complete it. The clerk must note on the docket the action taken and notify the parties.

(C) When a transcript is complete, the reporter must file it with the district clerk and notify the circuit clerk of the filing.

(D) If the reporter fails to file the transcript on time, the circuit clerk must notify the district judge and do whatever else the court of appeals directs.

(2) *District clerk's duty to forward.* When the record is complete, the district clerk must number the documents constituting the record and send them promptly to the circuit clerk together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party or the circuit clerk, the district clerk will not send to the court of appeals documents of unusual bulk or weight, physical exhibits other than documents, or other parts of the record designated for omission by local rule of the court of appeals. If the exhibits are unusually bulky or heavy, a party must arrange with the clerks in advance for their transportation and receipt.

(c) *Retaining the record temporarily in the district court for use in preparing the appeal.* The parties may stipulate, or the district court on motion may order, that the district clerk retain the record temporarily for the parties to use in preparing the papers on appeal. In that event the district clerk must certify to the circuit clerk that the record on appeal is complete. Upon receipt of the appellee's brief, or earlier if the court orders or the parties agree, the appellant must request the district clerk to forward the record.

(d) *[Abrogated.]*

(e) *Retaining the record by court order.*

(1) The court of appeals may, by order or local rule, provide that a certified copy of the docket entries be forwarded instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forwarded.

(2) The district court may order the record or some part of it retained if the court needs it while the appeal is pending, subject, however, to call by the court of appeals.

(3) If part or all of the record is ordered retained, the district clerk must send to the court of appeals a copy of the order and the docket entries together with the parts of the original record allowed by the district court and copies of any parts of the record designated by the parties.

(f) *Retaining parts of the record in the district court by stipulation of the parties.* The parties may agree by written stipulation filed in the district court that designated parts of the record be retained in the district court subject to call by the court of appeals or request by a party. The parts of the record so designated remain a part of the record on appeal.

(g) *Record for a preliminary motion in the court of appeals.* If, before the record is forwarded, a party makes any of the following motions in the court of appeals:

- for dismissal;

- or release;
- for a stay pending appeal;
- for additional security on the bond on appeal or on a bond or other security provided to obtain a stay of judgment; or
- for any other intermediate order—

the district clerk must send the court of appeals any parts of the record designated by any party. (Amended effective December 1, 2018.)

Circuit Rule 11. Transmission of the record.

11.1 Duties of Court Reporters. In all cases where transcripts are ordered, the court reporter must use a form provided by the clerk of this court and:

(a) Acknowledge receiving the transcript order, and indicate the date of receipt;

(b) State whether adequate financial arrangements have been made under the CJA, or otherwise;

(c) Provide the number of trial or hearing days involved in the transcript, and estimate the total number of pages;

(d) Give an estimated date when the transcript will be finished; and

(e) Certify that he or she expects to file the transcript with the district court clerk within the time estimated.

11.2 Requests for Extensions of Time. Court reporters seeking extensions of the time for filing the transcript beyond the 30 day period fixed by Fed. R. App. P. 11(b) must file an extension request with the clerk of this court and must specify in detail:

(a) The amount of work accomplished on the transcript;

(b) A list of all outstanding transcripts due to this and other courts, including the due dates for filing; and

(c) A verification that the trial court judge who tried the case is aware of and approves the extension request.

If a court reporter's request for an extension of time is granted, he or she must promptly notify all counsel or unrepresented parties of the extended filing date and send a copy of the notification to this court.

11.3 Duty of the Clerk. The district court clerk is responsible for determining when the record on appeal is complete for purposes of the appeal. Unless the record on appeal is sent to this court within 15 days from the filing of the notice of appeal or 15 days after the filing of the transcript of any trial proceedings, whichever is later, the district court clerk must advise the clerk of this court of the reasons for delay and request an extension to file the record. The clerk of this court may grant an extension for no more than 45 days. Extensions beyond 45 days are referred to a single judge. When transmitting the record on appeal in a direct criminal appeal involving more than one defendant, the district court must separate and identify the pleadings and any transcripts of pre-trial, sentencing, and post-trial hearings that apply to fewer than all of the defendants. However, only one copy of the trial transcript is required. In an action involving more than one defendant at trial but where separate actions are filed under 28 U.S.C. § 2255, the district court must separate and identify the pleadings and transcripts of pre-trial, sentencing, and post-trial hearings that apply to less than all of the defendants. One copy of the trial transcript is required for each defendant filing a separate § 2255 action.

I.O.P.

The clerk will monitor all outstanding transcripts and delays.

On October 11, 1982, the Fifth Circuit Judicial Council adopted a resolution requiring each district court in the Fifth Circuit to develop a court reporter management plan providing for the day-to-day management and supervision of an efficient court reporting service within the district court. These plans must provide for the supervision of court reporters in their relations with litigants as specified in the Court Reporter Act, including fees charged for transcripts, adherence to transcript format prescriptions, and delivery schedules. The plans must also provide that a judge, the clerk, or some other person designated by the court supervises the court reporters.

FRAP 12. Docketing the appeal; filing a representation statement; filing the record.

(a) *Docketing the appeal.* Upon receiving the copy of the notice of appeal and the docket entries from the district clerk under Rule 3(d), the circuit clerk must docket the appeal under the title of the district-court action and must identify the appellant, adding the appellant's name if necessary.

(b) *Filing a representation statement.* Unless the court of appeals designates another time, the attorney who filed the notice of appeal must, within 14 days after filing the notice, file a statement with the circuit clerk naming the parties that the attorney represents on appeal.

(c) *Filing the record, partial record, or certificate.* Upon receiving the record, partial record, or district clerk's certificate as provided in Rule 11, the circuit clerk must file it and immediately notify all parties of the filing date.

FRAP 12.1. Remand After an Indicative Ruling by the District Court on a Motion for Relief That Is Barred by a Pending Appeal.

(a) *Notice to the Court of Appeals.* If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the circuit clerk if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) *Remand After an Indicative Ruling.* If the district court states that it would grant the motion or that the motion raises a substantial issue, the court of appeals may remand for further proceedings but retains jurisdiction unless it expressly dismisses the appeal. If the court of appeals remands but retains jurisdiction, the parties must promptly notify the circuit clerk when the district court has decided the motion on remand.

Circuit Rule 12. Representation statement.

Counsel can satisfy the "representation statement" required by Fed. R. App. P. 12(b) by completing this court's "Notice of Appearance Form" and returning it to the clerk within 30 days of filing the notice of appeal.

TITLE III. APPEALS FROM THE UNITED STATES TAX COURT

FRAP 13. Appeals from the tax court.

(a) *Appeal as of right.*

(1) *How Obtained: Time for Filing a Notice of Appeal.*

(A) An appeal as of right from the United States Tax Court is commenced by filing a notice of appeal with the Tax Court clerk within 90 days after the entry of the Tax Court's decision. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d). If one party files a timely notice of appeal, any other party may file a notice of appeal within 120 days after the Tax Court's decision is entered.

(B) If, under Tax Court rules, a party makes a timely motion to vacate or revise the Tax Court's decision, the time to file a notice of appeal runs from the entry of the order disposing of the motion or from the entry of a new decision, whichever is later.

(2) *Notice of appeal; how filed.* The notice of appeal may be filed either at the Tax Court clerk's office in the District of Columbia or by mail addressed to the clerk. If sent by mail the notice is considered filed on the postmark date, subject to § 7502 of the Internal Revenue Code, as amended, and the applicable regulations.

(3) *Contents of the notice of appeal; service; effect of filing and service.* Rule 3 prescribes the contents of a notice of appeal, the manner of service, and the effect of its filing and service. Form 2 in the Appendix of Forms is a suggested form of a notice of appeal.

(4) *The record on appeal; forwarding; filing.*

(A) Except as otherwise provided under Tax Court rules for the transcript of proceedings, the appeal is governed by the parts of Rules 10, 11, and 12 regarding the record on appeal from a district court, the time and manner of forwarding and filing, and the docketing in the court of appeals.

(B) If an appeal is taken to more than one court of appeals, the original record must be sent to the court named in the first notice of appeal filed. In an appeal to any other court of appeals, the appellant must apply to that other court to make provision for the record.

(b) *Appeal by Permission.* An appeal by permission is governed by Rule 5. (Amended effective December 1, 2013.)

FRAP 14. Applicability of other rules to appeals from the tax court.

All provisions of these rules, except Rules 4, 6-9, 15-20, and 22-23, apply to appeals from the Tax Court. References in any applicable rule (other than Rule

24(a)) to the district court and district clerk are to be read as referring to the Tax Court and its clerk. (Amended effective December 1, 2013.)

TITLE IV. REVIEW OR ENFORCEMENT OF AN ORDER OF AN ADMINISTRATIVE AGENCY, BOARD, COMMISSION, OR OFFICER

FRAP 15. Review or enforcement of an agency order — How obtained; intervention.

(a) *Petition for review; joint petition.*

(1) Review of an agency order is commenced by filing, within the time prescribed by law, a petition for review with the clerk of a court of appeals authorized to review the agency order. If their interests make joinder practicable, two or more persons may join in a petition to the same court to review the same order.

(2) The petition must:

(A) name each party seeking review either in the caption or the body of the petition — using such terms as "et al.," "petitioners," or "respondents" does not effectively name the parties;

(B) name the agency as a respondent (even though not named in the petition, the United States is a respondent if required by statute); and

(C) specify the order or part thereof to be reviewed.

(3) Form 3 in the Appendix of Forms is a suggested form of a petition for review.

(4) In this rule "agency" includes an agency, board, commission, or officer; "petition for review" includes a petition to enjoin, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute.

(b) *Application or cross-application to enforce an order; answer; default.*

(1) An application to enforce an agency order must be filed with the clerk of a court of appeals authorized to enforce the order. If a petition is filed to review an agency order that the court may enforce, a party opposing the petition may file a cross-application for enforcement.

(2) Within 21 days after the application for enforcement is filed, the respondent must serve on the applicant an answer to the application and file it with the clerk. If the respondent fails to answer in time, the court will enter judgment for the relief requested.

(3) The application must contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief requested.

(c) *Service of the petition or application.* The circuit clerk must serve a copy of the petition for review, or an application or cross-application to enforce an agency order, on each respondent as prescribed by Rule 3(d), unless a different manner of service is prescribed by statute. At the time of filing, the petitioner must:

(1) serve, or have served, a copy on each party admitted to participate in the agency proceedings, except for the respondents;

(2) file with the clerk a list of those so served; and

(3) give the clerk enough copies of the petition or application to serve each respondent.

(d) *Intervention.* Unless a statute provides another method, a person who wants to intervene in a proceeding under this rule must file a motion for leave to intervene with the circuit clerk and serve a copy on all parties. The motion — or other notice of intervention authorized by statute — must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.

(e) *Payment of fees.* When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the circuit clerk all required fees.

Circuit Rule 15. Review or enforcement of an agency order — How obtained; intervention.

15.1 Docketing Fee and Copy of Orders — Agency Review Proceedings. At the time a party files a petition for review under Fed. R. App. P. 15, the party must:

(a) Pay the filing fee to the clerk; and

(b) Attach a copy of the order or orders to be reviewed.

15.2 Proceedings for Enforcement of Orders of the National Labor Relations Board. In National Labor Relations Board enforcement proceedings under Fed. R. App. P. 15(b), the respondent is considered the petitioner, and the board the respondent, for briefing and oral argument purposes, unless otherwise ordered by the court.

15.3 Proceedings for Review of Orders of the Federal Energy Regulatory Commission.

15.3.1 Petition for Review. Every petition for review must specify in its caption the number, date, and identification of the order reviewed and append the service list required by Fed. R. App. P. 15(c). Counsel filing the petition must attach a certificate that the commission has posted, filed or entered the order being reviewed.

15.3.2 Docketing. All petitions for review and other documents concerning commission orders in the same number series (i.e., 699, 699A, 699B) are assigned to the same docket.

15.3.3 Intervention.

(a) *Party.* A party to a commission proceeding may intervene in a review of the proceeding in this court by filing a notice of intervention. The notice must state whether the intervenor is a petitioner who objects to the order or a respondent who supports the order. A notice of intervention confers petitioner or respondent status on the intervening party as to all proceedings.

(b) *Nonparty.* A person who is not a party to a commission proceeding desiring to intervene in a review of that proceeding must file with the clerk, and serve upon all parties to the proceeding, a motion for leave to intervene. The motion must contain a concise statement of the moving party's interest, the grounds upon which intervention is sought, and why the interest asserted is not adequately protected by existing parties. Oppositions to such motions must be filed within 14 days of service.

15.3.4 Docketing Statement. All parties filing petitions for review must file a joint docketing statement within 30 days of the filing of the initial petition for review, but not later than 14 days after the expiration of the period permitted for filing a petition for review. The docketing statement must:

(a) List each issue to be raised in the review;

(b) List any other pending review proceeding of the same order in any other court; and

(c) Attach copies of the order to be reviewed.

Every petitioner filing for review after filing a docketing statement must specify in the petition for review any exceptions taken or additions to the issues listed in the docketing statement. Every party who intervenes after the filing of the docketing statement must specify in the notice of intervention any exceptions taken to the issues listed in the docketing statement.

15.3.5 Prehearing Conference. The clerk may give notice of a prehearing conference 10 days after filing of a docketing statement, or 14 days after entry of an order by the court deciding a venue issue, whichever is later. The prehearing conference will:

(a) Simplify and define issues;

(b) Agree on an appendix and record;

(c) Assign joint briefing responsibilities and schedule briefs; and

(d) Resolve any other matters aiding in the disposition of the proceeding.

Except for good cause, any party who petitions for review or intervenes after prehearing conference has been held is bound by the result of the prehearing conference.

15.3.6 Severance. Any petitioner or respondent may move to sever parties or issues by showing prejudice.

15.4 Proceedings for Review of Orders of the Benefits Review Board. In petitions filed by either the claimant or the employer under 33 U.S.C. § 921 to review orders of the Benefits Review Board, the Office of Workers Compensation of the United States Department of Labor, the nominal respondent, is aligned with the claimant for briefing and oral argument purposes, unless otherwise ordered by the court. Within 30 days of the filing of the petition for review of the board's decision, the petitioner must file a statement of the issues to be presented on appeal and serve them on the director and counsel for all parties so the appropriate alignment can be made.

15.5 Time for Filing Motion for Intervention. Time for Filing Motion for Intervention. A motion to intervene under Fed. R. App. P. 15(d) should be filed promptly after the petition for review of the agency proceeding is filed, but not later than 14 days prior to the due date of the brief of the party supported by the intervenor. (Amended Dec. 1, 2002; July 15, 2003; As amended Dec. 1, 2009.)

FRAP 15.1. Briefs and oral argument in a national labor relations board proceeding.

In either an enforcement or a review proceeding, a party adverse to the National Labor Relations Board proceeds first on briefing and at oral argument, unless the court orders otherwise.

FRAP 16. The record on review or enforcement.

(a) *Composition of the record.* The record on review or enforcement of an agency order consists of:

(1) the order involved;

(2) any findings or report on which it is based; and

(3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) *Omissions from or misstatements in the record.* The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

FRAP 17. Filing the record.

(a) *Agency to file; time for filing; notice of filing.* The agency must file the record with the circuit clerk within 40 days after being served with a petition for review, unless the statute authorizing review provides otherwise, or within 40 days after it files an application for enforcement unless the respondent fails to answer or the court orders otherwise. The court may shorten or extend the time to file the record. The clerk must notify all parties of the date when the record is filed.

(b) *Filing — What constitutes.*

(1) The agency must file:

(A) the original or a certified copy of the entire record or parts designated by the parties; or

(B) a certified list adequately describing all documents, transcripts of testimony, exhibits, and other material constituting the record, or describing those parts designated by the parties.

(2) The parties may stipulate in writing that no record or certified list be filed. The date when the stipulation is filed with the circuit clerk is treated as the date when the record is filed.

(3) The agency must retain any portion of the record not filed with the clerk. All parts of the record retained by the agency are a part of the record on review for all purposes and, if the court or a party so requests, must be sent to the court regardless of any prior stipulation.

Circuit Rule 17. Filing of the record.

Filing of the Record. Any agency failing to file the record within 40 days, must request an extension of time and provide specific reasons justifying the delay. The clerk may grant an extension for no more than 30 days. After such an extension expires, the court may order production of the record.

FRAP 18. Stay pending review.

(a) *Motion for a stay.*

(1) *Initial motion before the agency.* A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) *Motion in the court of appeals.* A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) *Bond.* The court may condition relief on the filing of a bond or other appropriate security.

FRAP 19. Settlement of a judgment enforcing an agency order in part.

When the court files an opinion directing entry of judgment enforcing the agency's order in part, the agency must within 14 days file with the clerk and serve on each other party a proposed judgment conforming to the opinion. A party who disagrees with the agency's proposed judgment must within 10 days file with the clerk and serve the agency with a proposed judgment that the party believes conforms to the opinion. The court will settle the judgment and direct entry without further hearing or argument.

FRAP 20. Applicability of rules to the review or enforcement of an agency order.

All provisions of these rules, except Rules 3-14 and 22-23, apply to the review or enforcement of an agency order. In these rules, "appellant" includes a petitioner or applicant, and "appellee" includes a respondent.

TITLE V. EXTRAORDINARY WRITS

FRAP 21. Writs of mandamus and prohibition, and other extraordinary writs.

(a) *Mandamus or prohibition to a court: petition, filing, service, and docketing.*

(1) A party petitioning for a writ of mandamus or prohibition directed to a court must file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial-court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A) The petition must be titled "In re [name of petitioner]."

(B) The petition must state:

(i) the relief sought;

(ii) the issues presented;

(iii) the facts necessary to understand the issue presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) Upon receiving the prescribed docket fee, the clerk must docket the petition and submit it to the court.

(b) *Denial; order directing answer; briefs; precedence.*

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The clerk must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial-court judge to address the petition or may invite an amicus curiae to do so. The trial-court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk must advise the parties, and when appropriate, the trial-court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The circuit clerk must send a copy of the final disposition to the trial-court judge.

(c) *Other extraordinary writs.* An application for an extraordinary writ other than one provided for in Rule 21(a) must be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on the application must conform, so far as is practicable, to the procedures prescribed in Rule 21(a) and (b).

(d) *Form of papers; number of copies.* All papers must conform to Rule 32(c)(2). Except by the court's permission, a paper must not exceed 30 pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by Rule 21(a)(2)(C). An original and 3 copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

Circuit Rule 21. Writs of mandamus and prohibition, and other extraordinary writs.

Petition for Writ. The petition must contain a certificate of interested persons as described in 5th Cir. R. 28.2.1. The certificate of interested persons and the items required by 5th Cir. R. 21 do not count toward the page limit.

In addition to the items required by Fed. R. App. P. 21, the application must contain a copy of any memoranda or briefs filed in the district court supporting the application to that court for relief and any memoranda or briefs filed in opposition, as well as a transcript of any reasons the district court gave for its action.

TITLE VI. HABEAS CORPUS; PROCEEDINGS IN FORMA PAUPERIS

FRAP 22. Habeas corpus and Section 2255 proceedings.

(a) *Application for the original writ.* An application for a writ of habeas corpus must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court. If a district court denies an application made or transferred to it, renewal of the application before a circuit judge is not permitted. The applicant may, under 28 U.S.C.S. § 2253, appeal to the court of appeals from the district court's order denying the application.

(b) *Certificate of appealability.*

(1) In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district clerk must send to the court of appeals the certificate (if any) and the statement described in Rule 11(a) of the Rules Governing Proceedings Under 28 U.S.C. § 2254 or § 2255 (if any), along with the notice of appeal and the file of the district-court proceedings. If the district judge has denied the certificate, the applicant may request a circuit judge to issue it.

(2) A request addressed to the court of appeals may be considered by a circuit judge or judges, as the court prescribes. If no express request for a certificate is filed, the notice of appeal constitutes a request addressed to the judges of the court of appeals.

(3) A certificate of appealability is not required when a state or its representative or the United States or its representative appeals.

JUDICIAL DECISIONS

Certificate of appealability.

Certificate of probable cause required under Rule 22(b) will not be issued where petitioner's claim is so clearly foreclosed by precedent that he cannot make substantial showing of denial of federal right. Fabian v. Reed, 714 F.2d 39 (5th Cir. 1983).

Circuit Rule 22. Applications for certificates of appealability and motions for permission to file second or successive habeas corpus applications.

Applications for certificates of appealability, motions for permission to file second or successive applications under 28 U.S.C.S. §§ 2254 and 2255, and any responses must conform to the format requirements and the length limitations of Fed. R. App. P. 32(a), and 5th Cir. R. 32 as applicable.

I.O.P. to Fed. R. App. P. 22.

See 5th Cir. R. 27.3 concerning emergency motions. Where the district court has granted a COA, the clerk shall include in the original briefing notice a deadline for any application for COA on additional issues, and where feasible, shall make the deadline coextensive with the briefing deadline. (Amended effective February 1, 2011.)

FRAP 23. Custody or release of a prisoner in a habeas corpus proceeding.

(a) *Transfer of custody pending review.* Pending review of a decision in a habeas corpus proceeding commenced before a court, justice, or judge of the United States for the release of a prisoner, the person having custody of the prisoner must not transfer custody to another unless a transfer is directed in accordance with this rule. When, upon application, a custodian shows the need for a transfer, the court, justice, or judge rendering the decision under review may authorize the transfer and substitute the successor custodian as a party.

(b) *Detention or release pending review of decision not to release.* While a decision not to release a prisoner is under review, the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court, may order that the prisoner be:

(1) detained in the custody from which release is sought;

(2) detained in other appropriate custody; or

(3) released on personal recognizance, with or without surety.

(c) *Release pending review of decision ordering release.* While a decision ordering the release of a prisoner is under review, the prisoner must — unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise — be released on personal recognizance, with or without surety.

(d) *Modification of the initial order on custody.* An initial order governing the prisoner's custody or release, including any recognizance or surety, continues in effect pending review unless for special reasons shown to the court of appeals or the Supreme Court, or to a judge or justice of either court, the order is modified or an independent order regarding custody, release, or surety is issued.

I.O.P. to Fed. R. App. P. 23.

See 5th Cir. R. 9.2 for procedures governing applications for release.

FRAP 24. Proceeding in forma pauperis.

(a) *Leave to proceed in forma pauperis.*

(1) *Motion in the district court.* Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) *Action on the motion.* If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) *Prior approval.* A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court — before or after the notice of appeal is filed — certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

(4) *Notice of district court's denial.* The district clerk must immediately notify the parties and the court of appeals when the district court does any of the following:

(A) denies a motion to proceed on appeal in forma pauperis;

(B) certifies that the appeal is not taken in good faith; or

(C) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) *Motion in the court of appeals.* A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in Rule 24(a)(4). The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action. If no affidavit was filed in the district court, the party must include the affidavit prescribed by Rule 24(a)(1).

(b) *Leave to proceed in forma pauperis on appeal from the United State Tax Court or on appeal or review of an administrative-agency proceeding.* When an appeal or review of a proceeding before an administrative agency, board, commission, or officer (including for the purpose of this rule the United States Tax Court) proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).

(1) in an appeal from the United States Tax Court; and

(2) when an appeal or review of a proceeding before an administrative agency, board, commission, or officer proceeds directly in the court of appeals.

(c) *Leave to use original record.* A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part. (Amended December 1, 2002; amended December 1, 2013.)

TITLE VII. GENERAL PROVISIONS

FRAP 25. Filing and service.

(a) *Filing.*

(1) *Filing with the clerk.* A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

(2) *Filing: method and timeliness.*

(A) *In general.* Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) *A brief or appendix.* A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

(i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or

(ii) dispatched to a third-party commercial carrier for delivery to the clerk within 3 days.

(C) *Inmate filing.* A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C.S. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

(D) *Electronic filing.* A court of appeals may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) *Filing a motion with a judge.* If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge must note the filing date on the motion and give it to the clerk.

(4) *Clerk's refusal of documents.* The clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.

(5) *Privacy Protection.* An appeal in a case whose privacy protection was governed by Federal Rule of Bankruptcy Procedure 9037, Federal Rule of Civil Procedure 5.2, or Federal Rule of Criminal Procedure 49.1 is governed by the same rule on appeal. In all other proceedings, privacy protection is governed by Federal Rule of Civil Procedure 5.2, except that Federal Rule of Criminal Procedure 49.1 governs when an extraordinary writ is sought in a criminal case.

(b) *Service of all papers required.* Unless a rule requires service by the clerk, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal or review. Service on a party represented by counsel must be made on the party's counsel.

(c) *Manner of service.*

(1) Service may be any of the following:

(A) personal, including delivery to a responsible person at the office of counsel;

(B) by mail;

(C) by third-party commercial carrier for delivery within 3 days; or

(D) by electronic means, if the party being served consents in writing.

(2) If authorized by local rule, a party may use the court's transmission equipment to make electronic service under Rule 25(c)(l)(D).

(3) When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party must be by a manner at least as expeditious as the manner used to file the paper with the court.

(4) Service by mail or by commercial carrier is complete on mailing or delivery to the carrier. Service by electronic means is complete on transmission, unless the party making service is notified that the paper was not received by the party served.

(d) *Proof of service.*

(1) A paper presented for filing must contain either of the following:

(A) an acknowledgment of service by the person served; or

(B) proof of service consisting of a statement by the person who made service certifying:

(i) the date and manner of service;

(ii) the names of the persons served; and

(iii) their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service must also state the date and manner by which the document was mailed or dispatched to the clerk.

(3) Proof of service may appear on or be affixed to the papers filed.

(e) *Number of copies.* When these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case. (Amended December 1, 2002; amended December 1, 2006; amended December 1, 2007.)

Circuit Rule 25. Filing and service.

25.1 Facsimile Filing. The clerk may accept, for filing, papers sent by facsimile in situations the clerk determines are emergencies or that present other compelling circumstances.

25.2 Electronic Case Filing Procedures.

25.2.1 Electronic Filing. At the court's direction, the clerk will set an implementation date for an initial period of voluntary, and a subsequent date for mandatory, use of the court's electronic filing system. Thereafter, all cases will be assigned to the court's electronic filing system. Counsel must register as Filing Users under Rule 25.2.3 and comply with the court's electronic filing standards, posted separately on the court's website, www.ca5.uscourts.gov, unless excused for good cause. Non-incarcerated pro se litigants may request the clerk's permission to register as a Filing User, in civil cases only, under such conditions as the clerk may authorize.

Except as authorized in the electronic filing rules and standards, Filing Users must submit all briefs, motions, petitions for rehearing in PDF text, (not scanned), format and in paper format as prescribed by the clerk, see 5th Cir. R. 30, 31, etc. Whenever possible, other documents, e.g., record excerpts, etc., should be in PDF text format, and in paper format as prescribed by the clerk. All paper filings must be identical to the electronic file(s). Upon the clerk's request, a Filing User must promptly provide an identical electronic version of any paper document previously filed in the same case.

25.2.2 Filing in Original Proceedings. Filing Users may be required to file case-initiating documents in original proceedings, e.g., mandamus, petitions for second and successive habeas corpus relief, petitions for review, etc., in paper format. Subsequent documents may be filed electronically and in paper format as prescribed by the clerk.

25.2.3 Filing Users: Eligibility, Registration, Passwords. All counsel not excused from filing electronically must register themselves, or any additional approved designee, as Filing Users of the court's electronic filing system. The clerk will define the registration requirements and continuing duty of counsel to keep their contact information current, see 5th Cir. R. 46.1, and will determine necessary training to receive Filing User registration.

Non-incarcerated pro se litigants granted Filing User status under Rule 25.2.1 will have Filing User status terminated as prescribed by the clerk, generally at the termination of the case. If a pro se party, permitted to register as a Filing User, retains an attorney, that counsel must advise the clerk.

A Filing User's registration constitutes consent to electronic service of all documents as provided in the Fed. R. App. P. and the 5th Cir. R.

Filing Users agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if their password is compromised. Filing Users may be sanctioned for failure to comply with this provision.

Subject to a single judge's review, the clerk may terminate a Filing User's electronic filing privileges for abusing the system by an inordinate number of filings, filings of excessive size, or other failures to comply with the electronic filing rules and standards.

A Filing User may move to withdraw from participation in the electronic filing system for good cause shown.

25.2.4 Consequences of Electronic Filing. A Filing User's electronic transmission of a document to the electronic filing system consistent with these rules and the court's electronic filing standards, together with the court's transmission of a Notice of Docket Activity, constitutes filing of the document under the Fed. R. App. P. and 5th Cir. R., and constitutes entry of the document on the docket under Fed. R. App. P. 36 and 45(b). If a party must file a motion for leave to file, both the motion and document at issue must be submitted electronically and in identical paper form; the underlying document will be filed if the court so directs.

A Filing User must verify a document's legibility and completeness before filing it with the court. Except as authorized by the court's electronic filing rules and standards, documents the Filing User creates and files electronically must be in PDF text format. When a Filing User's document has been filed electronically, the official record is the electronic document stored by the court, and the filing party is bound by the document as filed. Except for documents first filed in paper form and subsequently submitted electronically under 5th Cir. R. 25.2.2, an electronically filed document is deemed filed at the date and time stated on the court's Notice of Docket Activity.

Filing must be completed by 11:59 p.m. Central Time to be considered timely filed that day.

25.2.5 Service of Documents by Electronic Means. The court's electronic Notice of Docket Activity constitutes service of the filed document on all Filing Users. Parties who are not Filing Users must be served with a copy of any document filed electronically in accordance with the Fed. R. App. P. 25 and 5th Cir. R. 25 If the document is not available electronically, the filer must use an alternative method of service.

The court's electronic Notice of Docket Activity does not replace the certificate of service required by Fed. R. App. P. 25 (d).

25.2.6 Entry of Court-Issued Documents. Except as otherwise provided by rule or order, all of the court's orders, opinions, judgments, and proceedings relating to cases electronically filed will be filed in accordance with these rules, and will constitute entry on the docket under Fed. R. App. P. 36 and 45(b).

Any order or other court-issued document filed electronically does not require a signature of a judge or other court employee. An electronic order has the same force and effect as a paper copy of the order. Orders also may be entered as 'text-only' entries on the docket, without an attached document. Such orders are official and binding.

25.2.7 Attachments and Exhibits to Motions and Original Proceedings. Filing Users must submit all documents referenced as exhibits or attachments, in electronic form within any file size limits the clerk may prescribe, as well as any paper copies the clerk specifies. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. The clerk may require parties to file additional excerpts or the complete document.

25.2.8 Sealed Documents. A Filing User may move to file documents under seal in electronic form if permitted by law, and as authorized in the court's electronic filing standards. The court's order authorizing or denying the electronic filing of documents under seal may be filed electronically. Documents ordered placed under seal may be filed traditionally in paper or electronically, as authorized by the court. If filed traditionally, a paper copy of the authorizing order must be attached to the documents under seal and delivered to the clerk.

25.2.9 Retention Requirements. The Filing User must maintain in paper form documents filed electronically and requiring original signatures, other than that of the Filing User, for 3 years after the mandate or order closing the case issues. On request of the court, the Filing User must provide original documents for review.

25.2.10 Signatures. The user log-in and password required to submit documents in electronic form serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Fed. R. App. P. 32(d) and 5th Cir. R. 28.5, and any other purpose for which a signature is required in connection with proceedings before the court.

The Filing User's name under whose log-in and password the document is submitted must be preceded by an 's″ and be typed in the space where the signature otherwise would appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User.

Documents which require more than one party's signature must be filed electronically by:

submitting a scanned document containing all necessary signatures;

showing the consent of the other parties on the document; or

any other manner approved by the court.

Electronically represented signatures of all parties and Filing Users described above are presumed valid. If any party, counsel of record, or Filing User objects to the representation of his or her signature on an electronic document as described above, he or she must file a notice within 10 days setting forth the basis of the objection.

25.2.11 Notice of Court Orders and Judgment. The clerk will transmit electronically a Notice of Docket Activity to Filing Users in the case when entering an order or judgment. This electronic transmission constitutes the notice and service of the opinion required by Fed. R. App. P. 36(b) and 45(c). The clerk must give notice in paper form in accordance with those rules to a person who has not consented to electronic service.

25.2.12 Technical Failures. A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

25.2.13 Public Access/Redaction of Personal Identifiers. Parties must refrain from including, or must partially redact where inclusion is necessary, certain personal data identifiers whether filed electronically or in paper form as prescribed in Fed. R. App. P. 25, Fed. R. Civ. P. 5.2(a), and Fed. R. Crim. P. 49.1. Responsibility for complying with the rules and redacting personal identifiers rests solely with counsel. The parties or their counsel may be required to certify compliance with these rules. The clerk will not review pleadings, and is not responsible for data redaction.

Parties wishing to file a document containing the personal data identifiers referenced above may:

file an un-redacted version of the document under seal, or

file a reference list under seal. The list must contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The court will retain the un-redacted version of the document or the reference list as part of the record. The court may require the party to file a redacted copy for the public file.

25.2.14 Hyperlinks. Electronically filed documents may contain the following types of hyperlinks:

Hyperlinks to other portions of the same document;

Hyperlinks to PACER that contains a source document for a citation;

Hyperlinks to documents already filed in any CM/ECF database;

Hyperlinks between documents that will be filed together at the same time;.

Hyperlinks that the clerk may approve in the future as technology advances.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document.

A hyperlink, or any site to which it refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked. The court accepts no responsibility for the availability or functionality of any hyperlink.

25.2.15 Changes. The clerk may make changes to the standards for electronic filing to adapt to changes in technology or to facilitate electronic filing. Changes to the court's electronic filing standards will be posted on the court's internet website. (Amended Dec. 1, 2002; July 15, 2003; As amended Dec. 1, 2009.)

Editor's Note — The Fifth Circuit Court Sets March 15, 2010 as the date for mandatory electronic case filing . The Fifth Circuit Court website provided:

"Pursuant to Fifth Circuit Rule 25.2.1, the court established March 15, 2010, as the effective date for attorneys to use our ECF program to file in cases before the court. Unless excused for good cause, counsel must register as Filing Users under Rule 25.2.3 and comply with the court's electronic filing standards, posted separately on our website, www.ca5.uscourts.gov/cmecf. Attorneys must be admitted to practice in the Fifth Circuit and are required to file an appearance form in each case they are involved in before making any electronic filings.

"Even if you do not currently have a case before the court, we most strongly recommend that all members of the Fifth Circuit bar register now as Fifth Circuit filing users. Please go to the PACER Service Center website, www.pacer.gov., and select the "REGISTER" link. There is no cost to register as a Fifth Circuit Filer with PACER. Then please take the time to become familiar with the information we have on our ECF website. When you do have a case, we ask that you file an appearance form as soon as possible to avoid filing delays."

I.O.P.

Limits on recovery of mailing or commercial carrier delivery costs. See 5th Cir. R. 39.2.

FRAP 26. Computing and extending time.

(a) *Computing time.* The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

(2) *Period Stated in Hours.* When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) *Inaccessibility of the Clerk's Office.* Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 26(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or

(B) during the last hour for filing under Rule 26(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) *"Last Day" Defined.* Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing in the district court, at midnight in the court's time zone;

(B) for electronic filing in the court of appeals, at midnight in the time zone of the circuit clerk's principal office;

(C) for filing under Rules 4(c)(1), 25(a)(2)(A)(ii), and 25(a)(2)(A)(iii)-and filing by mail under Rule 13(a)(2)—at the latest time for the method chosen for delivery to the post office, third-party commercial carrier, or prison mailing system; and

(D) for filing by other means, when the clerk's office is scheduled to close.

(5) *"Next Day" Defined.* The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) *"Legal Holiday" Defined.* "Legal holiday" means:

(A) the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day;

(B) any day declared a holiday by the President or Congress; and

(C) for periods that are measured after an event, any other day declared a holiday by the state where either of the following is located: the district court that rendered the challenged judgment or order, or the circuit clerk's principal office.

(b) *Extending time.* For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file:

(1) a notice of appeal (except as authorized in Rule 4) or a petition for permission to appeal; or

(2) a notice of appeal from or a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review an order of an administrative agency, board, commission, or officer of the United States, unless specifically authorized by law.

(c) *Additional time after service.* When a party may or must act within a specified time after being served, 3 days are added after the period would otherwise expire under Rule 26(a), unless the paper is delivered on the date of service stated in the proof of service. (Amended effective December 1, 2005; amended effective December 1, 2009; amended effective December 1, 2016; amended effective Dec. 1, 2018.)

Circuit Rule 26. Computation and extension of time.

26.1 Computing Time. Except for briefs and record excerpts, all other papers, including petitions for rehearing, are not timely unless the clerk actually receives them within the time fixed for filing. Briefs and record excerpts are deemed filed on the day sent to the clerk electronically where permitted by 5th Cir. R. 30 and 31, by a third-party commercial carrier for delivery within 3 days, or on the day of mailing if the most expeditious form of delivery by mail is used. The additional 3 days after service by mail or after delivery to a commercial carrier for delivery within 3 days referred to in Fed. R. App. P.

26(c), applies only to matters served by a party and not to filings with the clerk of such matters as petitions for rehearing under Fed. R. App. P. 40, petitions for rehearing en banc under Fed. R. App. P. 35, and bills of costs under Fed. R. App. P. 39.

26.2 Extensions of Time. The court requires timely filing of all papers within the time period allowed by the rules, without extensions of time, except for good cause. Appeals which are not processed timely will be dismissed for want of prosecution without further notice under 5th Cir. R. 42. If the parties or counsel waive their right to file a reply brief, they must immediately notify the clerk to expedite submitting the case to the court. (Amended Dec. 1, 2002; July 15, 2003; As amended Dec. 1, 2009; As amended Dec. 1, 2016.)

FRAP 26.1. Corporate disclosure statement.

(a) *Who must file.* Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) *Time for filing; supplemental filing.* A party must file the Rule 26.1(a) statement with the principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever occurs first, unless a local rule requires earlier filing. Even if the statement has already been filed, the party's principal brief must include the statement before the table of contents. A party must supplement its statement whenever the information that must be disclosed under Rule 26.1(a) changes.

(c) *Number of copies.* If the Rule 26.1(a) statement is filed before the principal brief, or if a supplemental statement is filed, the party must file an original and 3 copies unless the court requires a different number by local rule or by order in a particular case. (Amended December 1, 2002.)

Circuit Rule 26.1. Certificate of interested persons.

26.1.1 Corporate Disclosure Statement. The court uses a "Certificate of Interested Persons" in lieu of a Corporate Disclosure Statement. See 5th Cir. R. 28.2.1.

FRAP 27. Motions.

(a) *In general.*

(1) *Application for relief.* An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) *Contents of a motion.*

(A) *Grounds and relief sought.* A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) *Accompanying documents.*

(i) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(ii) An affidavit must contain only factual information, not legal argument.

(iii) A motion seeking substantive relief must include a copy of the trial court's opinion or agency's decision as a separate exhibit.

(C) *Documents barred or not required.*

(i) A separate brief supporting or responding to a motion must not be filed.

(ii) A notice of motion is not required.

(iii) A proposed order is not required.

(3) *Response.*

(A) *Time to file.* Any party may file a response to a motion; Rule 27(a)(2) governs its contents. The response must be filed within 10 days after service of the motion unless the court shortens or extends the time. A motion authorized by Rules 8, 9, 18, or 41 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(B) *Request for affirmative relief.* A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by Rule 27(a)(3)(A) and (a)(4). The title of the response must alert the court to the request for relief.

(4) *Reply to response.* Any reply to a response must be filed within 7 days after service of the response. A reply must not present matters that do not relate to the response.

(b) *Disposition of a motion for a procedural order.* The court may act on a motion for a procedural order — including a motion under Rule 26(b) — at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court's, or the clerk's, action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) *Power of a single judge to entertain a motion.* A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge.

(d) *Form of papers; length limits; and number of copies.*

(1) *Format.*

(A) *Reproduction.* A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) *Cover.* A cover is not required but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(C) *Binding.* The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(D) *Paper size, line spacing, and margins.* The document must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(E) *Typeface and type styles.* The document must comply with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6).

(2) *Length limits.* Except by the court's permission, and excluding the accompanying documents authorized by Rule 27(a)(2)(B):

(A) a motion or response to a motion produced using a computer must not exceed 5,200 words;

(B) a handwritten or typewritten motion or response to a motion must not exceed 20 pages;

(C) a reply produced using a computer must not exceed 2,600 words; and

(D) a handwritten or typewritten reply to a response must not exceed 10 pages.

(3) *Number of copies.* An original and 3 copies must be filed unless the court requires a different number by local rule or by order in a particular case.

(e) *Oral argument.* A motion will be decided without oral argument unless the court orders otherwise. (Amended effective December 1, 2005.)

Circuit Rule 27. Motions.

27.1 Clerk May Rule on Certain Motions. Under Fed. R. App. P. 27(b), the clerk has discretion to act on, in accordance with the standards set forth in the applicable rules, or to refer to the court, the procedural motions listed below. The clerk's action is subject to review by a single judge upon a motion for reconsideration made within the 14 or 45 day period set by Fed. R. App. P. 40.

27.1.1 To extend the time for: filing answers or replies to pending motions; paying filing fees; filing motions to proceed in forma pauperis; filing petitions for panel rehearing and rehearing en banc, and for reconsideration of single judge orders, for not longer than 14 days, 30 days if the applicant for extension is a prisoner proceeding pro se; filing briefs as permitted by 5th Cir. R. 31.4; filing bills of costs; and filing applications under the Equal Access to Justice Act.

27.1.2 To rule on motions to file briefs out of time.

27.1.3 To stay further proceedings in appeals.

27.1.4 To correct briefs or pleadings filed in this court at counsel's request.

27.1.5 To stay the issuance of mandates pending certiorari in civil cases only, for no more than 30 days, provided the court has not ordered the mandate issued earlier.

27.1.6 To reinstate appeals dismissed by the clerk.

27.1.7 To enter and issue consent decrees in labor board and other government agency review cases.

27.1.8 To enter CJA Form 20 orders continuing trial court appointment of counsel on appeal for purposes of compensation.

27.1.9 To consolidate appeals.

27.1.10 To withdraw appearances.

27.1.11 To supplement or correct records.

27.1.12 To incorporate records or briefs on former appeals.

27.1.13 To file reply or supplemental briefs in addition to the single reply brief permitted by Fed. R. App. P. 28(c) prior to submission to the court.

27.1.14 To file an amicus curiae brief under Fed. R. App. P. 29 (see 5th Cir. R. 29.4).

27.1.15 To enlarge the number of pages of optional contents in record excerpts.

27.1.16 To extend the length limits for: briefs under Fed. R. App. P. 32(a)(7) and 5th Cir. R. 32; petitions for rehearing en banc and panel rehearing under Fed. R. App. P. 35(b)(2), and 40(b); certificates of appealability and motions for permission to file second or successive habeas corpus applications under 28 U.S.C.S §§ 2254 and 2255, under 5th Cir. R. 22; petitions for permission to appeal under 5th Cir. R. 5; and petitions for mandamus and extraordinary writs under 5th Cir. R. 21.

27.1.17 To proceed in forma pauperis, see Fed. R. App. P. 24 and 28 U.S.C.S. § 1915;

27.1.18 To appoint counsel or to permit appointed counsel to withdraw;

27.1.19 To obtain transcripts at government expense.

27.1.20 To rule on an unopposed motion by the government or a defendant in a direct criminal appeal to gain access to matters sealed in the case and for the use in prosecution of its appeal.

27.2 Single Judge May Rule on Certain Motions. Pursuant to Fed. R. App. P. 27(c), any single judge of this court has discretion, subject to review by a panel upon a motion for reconsideration made within the 14 or 45 day period set forth in Fed. R. App. P. 40, to take appropriate action on the following procedural motions:

27.2.1 The motions listed in 5th Cir. R. 27.1 that have been referred to a single judge for initial action, or for single judge reconsideration of a ruling made by the clerk, but the judge is not limited to the time restrictions in 5th Cir. R. 27.1.1.

27.2.2 To permit interventions in agency proceedings pursuant to Fed. R. App. P. 15(d).

27.2.3 To act on applications for certificates of appealability under Fed. R. App. P. 22(b) and 28 U.S.C.S. § 2253 except for death penalty cases where a three judge panel must act.

27.2.4 To extend for good cause the times prescribed by the Federal Rules of Appellate Procedure or by the rules of this court except for enlarging the time for initiating an appeal, see Fed. R. App. P. 26(b).

27.2.5 To substitute parties under Fed. R. App. P. 43.

27.2.6 To exercise the power granted in Fed. R. App. P. 8 and 9, respecting stays, or injunctions, or releases in criminal cases pending appeal, and subject to the restrictions set out in those rules; and to exercise the power granted in Fed. R. App. P. 18, respecting stays pending review of agency decisions or orders, subject to the restrictions on the power of a single judge contained in that rule.

27.2.7 To stay the issuance of mandates or to recall same pending certiorari.

27.2.8 To expedite appeals.

27.2.9 To strike a nonconforming brief or record excerpts as provided in 5th Cir. R. 32.5 and to strike other papers not conforming to the Fed. R. App. P. and 5th Cir. R.

27.3 Emergency Motions in Cases Other Than Capital Cases. Parties should not file motions seeking emergency relief unless there is an emergency sufficient to justify disruption of the normal appellate process. In cases not governed by 5th Cir. R. 8.10, motions seeking relief before the expiration of 14 days after filing must, subject to the penalties of Fed. R. App. P. 46(c), be supported by good cause and must:

Be preceded by a telephone call to the clerk's office and to the offices of opposing counsel advising of the intent to file the emergency motion. If time does not permit the filing of the motion by hand delivery or by mail, the clerk may permit filing by facsimile or by other electronic means. In an extraordinary case, the clerk may permit the submission of an oral motion by telephone. If the motion is filed by means other than hand delivery or mail, counsel should also later file the motion by hand delivery or by mail.

Be labeled "Emergency Motion."

State the nature of the emergency and the irreparable harm the movant will suffer if the motion is not granted.

Certify that the facts supporting emergency consideration of the motion are true and complete.

Provide the date by which action is believed to be necessary.

Attach any relevant order or other ruling of the district court as well as copies of all relevant pleadings, briefs, memoranda, or other papers filed by all parties in the district court. If this cannot be done, counsel must state the reason that it cannot be done.

Be served on opposing counsel at the same time and, absent agreement to the contrary with opposing counsel, in the same manner as the emergency motion is filed with the court.

Be filed in the clerk's office by 2:00 p.m. on the day of filing.

27.4 Form of Motions. Parties or counsel must comply with the requirements of Fed. R. App. P. 27 including the length limits of Fed. R. App. P. 27(d)(2). Except for purely procedural matters, motions must include a certificate of interested persons as described in 5th Cir. R. 28.2.1. Where a single judge or the clerk may act only an original and 1 copy need be filed. All motions requiring panel action require an original and 3 copies. All motions must state that the movant has contacted or attempted to contact all other parties and must indicate whether an opposition will be filed.

27.5 Motions To Expedite Appeal. Such motions are presented in the same manner as other motions. Only the court may expedite an appeal and only for good cause. If an appeal is expedited, the clerk will fix a briefing schedule unless a judge directs a specific date. (Amended Dec. 1, 2002; amended Dec. 1, 2009; amended effective May 25, 2016, to add 27.1.20.)

I.O.P.

General Standards for Ruling on Motions

5th Cir. R. 27 implements Fed. R. App. P. 27(b) and (c) and delegates to single Judges and the Clerk the authority to rule on specified motions, subject to review by the court. This I.O.P. provides the general sense of the court on the disposition of a variety of matters:

Briefs. — The court expects that all briefs will be filed timely. Motions for extension of time to file briefs are disfavored and should be made only in exceptional instances where "good cause" exists. No extension is automatic. If an extension is granted, it will be for the very least amount of time necessary, and except in the most unusually compelling circumstances, will not exceed 30 days in a criminal case, or 40 days in a civil case.

Litigants seeking to file briefs after the due date set in the briefing letter should understand that the court generally will not permit the brief's filing "out of time". However even in the unusual case where out of time filing is authorized, a brief generally will not be filed out of time more than 30 days beyond the original due date in a criminal case, or 40 days in a civil case.

Motions for Extension of Time to File Answers, Replies to Pending Motions or to Pay Filing Fees. — If such motions are granted, extensions generally will not exceed 30 days.

Reinstatement of Cases Dismissed by the Clerk. — The court normally will not reinstate a case dismissed by the clerk under 5th Cir. R. 27.1.6 unless:

The deficiency which caused the dismissal has been remedied; and

The motion for reinstatement is made as soon as reasonably possible and in any event within 45 days of dismissal.

Motions Panels. — Motions panels are drawn randomly from the active judges. These panels also operate as screening panels as discussed in the I.O.P. following 5th Cir. R. 34. The motions panels compositions are changed at the beginning of each court year to permit the judges to sit with other judges in screening and handling administrative motions.

Distribution

To Judges. — Motions requiring judges' consideration are assigned in rotation to all active judges on a routing log.

The clerk assembles a complete set of the motion papers, and any other necessary material and submits them with a routing form to the initiating judge. In single judge matters the initiating judge acts on the motion and returns it to the clerk with an appropriate order. For motions requiring panel action, a single set of papers is prepared, but the initiating judge transmits the file to the next judge with a recommendation. The second judge sends it on to the third judge, who returns the file and an appropriate order to the clerk.

Emergency Motions. — The clerk immediately assigns the matter to the next initiating judge in rotation on the administrative routing log and to the panel members. If the matter requires counsel to contact the initiating judge or panel members personally, the clerk will provide the names of the judges assigned the case, after getting approval from the initiating judge.

The motion papers are distributed as described above, except that a complete set, including any draft order, is forwarded to all members of the panel.

Motions After Assignment to Calendar. — After cases are assigned to the oral argument calendar, motions are circulated to the hearing panel rather than to the standard motions panels. The senior active judge on the panel is considered the initiating judge. The clerk enters orders responding to the motions on behalf of the panel until entry of the opinion.

Post-Decision Motions.

Extension of Time To File Petition for Rehearing or Leave To File Out of Time. — The clerk may act on or refer to the court a timely motion for an extension of time to file a petition for panel rehearing or for rehearing en banc for a period not longer than 14 days, 30 days if the applicant is a prisoner proceeding pro se. Motions for additional time beyond 14 or 30 days, or to file out of time, are submitted to the writing judge, unless he or she is a visiting judge. In that event the matter is referred to the senior active judge on the panel. If the senior active judge dissented, the matter is referred to the other active judge on the panel.

Stay or Recall of Mandate. — The clerk or a single judge, as appropriate, decides a motion for stay or recall of mandate pending action on a petition for writ of certiorari and routes and disposes of it in the same manner as in the preceding paragraph. (See 5th Cir. R. 27.1.5, 27.2.7, and 41).

Motions To Amend, Correct, or Settle the Judgment. — These motions are referred to the writing judge with copies to the panel members.

Remand from Supreme Court of the United States. — Remands from the Supreme Court of the United States are sent to the original panel for disposition when the Supreme Court's judgment is received. Counsel does not need to file a formal motion.

FRAP 28. Briefs.

(a) *Appellant's brief.* The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) a corporate disclosure statement if required by Rule 26.1;

(2) a table of contents, with page references;

(3) a table of authorities — cases (alphabetically arranged), statutes, and other authorities — with references to the pages of the brief where they are cited;

(4) a jurisdictional statement, including:

(A) the basis for the district court's or agency's subject-matter jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(B) the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction;

(C) the filing dates establishing the timeliness of the appeal or petition for review; and

(D) an assertion that the appeal is from a final order or judgment that disposes of all parties' claims, or information establishing the court of appeals' jurisdiction on some other basis;

(5) a statement of the issues presented for review;

(6) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28 (e));

(7) a summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(8) the argument, which must contain:

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

(9) a short conclusion stating the precise relief sought; and

(10) the certificate of compliance, if required by Rule 32(g)(1).

(b) *Appellee's Brief.* The appellee's brief must conform to the requirements of Rule 28(a)(1)-(8) and (10), except that none of the following need appear unless the appellee is dissatisfied with the appellant's statement:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case; and

(4) the statement of the standard of review.

(c) *Reply brief.* The appellant may file a brief in reply to the appellee's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities - cases (alphabetically arranged), statutes, and other authorities - with references to the pages of the reply brief where they are cited.

(d) *References to parties.* In briefs and at oral argument, counsel should minimize use of the terms "appellant" and "appellee." To make briefs clear, counsel should use the parties' actual names or the designations used in the lower court or agency proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore."

(e) *References to the Record.* References to the parts of the record contained in the appendix filed with the appellant's brief must be to the pages of the appendix. If the appendix is prepared after the briefs are filed, a party referring to the record must follow one of the methods detailed in Rule 30(c). If the original record is used under Rule 30(f) and is not consecutively paginated, or if the brief refers to an unreproduced part of the record, any reference must be to the page of the original document. For example:

- Answer p. 7;
- Motion for judgment p. 2;
- Transcript p. 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) *Reproduction of statutes, rules, regulations, etc.* If the court's determination of the issues presented requires the study of statutes, rules, regulations, etc., the relevant parts must be set out in the brief or in an addendum at the end, or may be supplied to the court in pamphlet form.

(g) *[Reserved].*

(h) *[Reserved].*

(i) *Briefs in a case involving multiple appellants or appellees.* In a case involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(j) *Citation of supplemental authorities.* If pertinent and significant authorities come to a party's attention after the party's brief has been filed — or after oral argument but before decision — a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited. (Amended effective December 1, 2005; amended December 1, 2013; amended effective December 1, 2016.)

Circuit Rule 28. Briefs.

28.1 Briefs — Technical Requirements. The technical requirements for permissible typefaces, paper size, line spacing, and length of briefs are found in Fed. R. App. P. and 5th Cir. R. 32.

28.2 Briefs — Contents.

28.2.1 Certificate of Interested Persons. The certificate of interested persons required by this rule is broader in scope than the corporate disclosure statement contemplated in Fed. R. App. P. 26.1. The certificate of interested persons provides the court with additional information concerning parties whose participation in a case may raise a recusal issue. A separate corporate disclosure statement is not required. Counsel and unrepresented parties will furnish a certificate for all private (non-governmental) parties, both appellants and appellees, which must be incorporated on the first page of each brief before the table of contents or index, and which must certify a complete list of all persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent corporations, or other legal entities who or which are financially interested in the outcome of the litigation. If a large group of persons or firms can be specified by a generic description, individual listing is not necessary. Each certificate must also list the names of opposing law firms and/or counsel in the case. The certificate must include all information called for by Fed. R. App. P. 26.1(a). Counsel and unrepresented parties must supplement their certificates of interested persons whenever the information that must be disclosed changes.

(a) Each certificate must list all persons known to counsel to be interested, on all sides of the case, whether or not represented by counsel furnishing the certificate. Counsel has the burden to ascertain and certify the true facts to the court.

(b) The certificate must be in the following form:

(1) Number and Style of Case;

(2) The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

(Here list names of all such persons and entities and identify their connection and interest.)

____

Attorney of record for ________________

28.2.2 Record References. Every assertion in briefs regarding matter in the record must be supported by a reference to the page number of the original record, whether in paper or electronic form, where the matter is found using the record citation form as directed by the Clerk of Court.

28.2.3 Request for Oral Argument. Counsel for appellant must include in a preamble to appellant's principal brief a short statement why oral argument would be helpful, or a statement that appellant waives oral argument. Appellee's counsel must likewise include in appellee's brief a statement why oral argument is or is not needed. The court will give these statements due, though not controlling, weight in determining whether to hold oral argument. See Fed. R. App. P. 34(a) and (f) and 5th Cir. R. 34.2.

28.3 Brief — Order of Contents. The order of contents of the brief is governed by Fed. R. App. P. 28 and this rule and shall be as follows:

(a) Certificate of interested persons required by 5th Cir. R. 28.2.1;

(b) Statement regarding oral argument required by 5th Cir. R. 28.2.3 (See Fed. R. App. P. 34(a)(1);

(c) A table of contents, with page references (see Fed. R. App. P. 28(a)(2));

(d) A table of authorities (see Fed. R. App. P. 28(a)(3));

(e) A jurisdictional statement as required by Fed. R. App. P. 28(a)(4)(A) through (D);

(f) A statement of issues presented for review (see Fed. R. App. P. 28(a)(5));

(g) A concise statement of the case setting out the facts relevant to the issues submitted for review (see FED. R. APP. P. 28(a)(6));

(h) A summary of the argument (see FED. R. APP. P. 28(a)(7));

(i) The argument (see FED. R. APP. P. 28(a)(8));

(j) A short conclusion stating the precise relief sought (see FED. R. APP. P. 28(a)(9));

(k) A signature of counsel or a party as required by FED. R. APP. P. 32(d);

(*l*) A certificate of service in the form required by FED. R. APP. P. 25;

(m) A certificate of compliance if required by FED. R. APP. P. 32(g)(1) and 5TH CIR. R. 32.3. (see FED. R. APP. P. 28(a)(10));

28.4 Supplemental Briefs. The rules do not permit the filing of supplemental briefs without leave of court, but there are some occasions, particularly after a case is orally argued or submitted on the summary calendar, where the court will call for supplemental briefs on particular issues. Also, where intervening decisions or new developments should be brought to the court's attention, counsel may direct a letter, not a supplemental brief, to the clerk with citations and succinct comment. See Fed. R. App. P. 28(j). If a new case is not reported, copies of the decision should be appended. The letter must be filed in 4 copies, and served on opposing counsel.

28.5 Signing the Brief. See Fed. R. App. P. 32(d). The signature requirement is interpreted broadly, and the attorney of record may designate another person to sign the brief for him or her. Where counsel for a particular party reside in different locations, it is not necessary to incur the expense of sending the brief from one person to another for multiple signatures.

28.6 Pro Se Briefs. Unless specifically directed by court order, pro se motions, briefs or correspondence will not be filed if the party is represented by counsel.

28.7 Citation to Unpublished Opinions, Orders, etc. Fed. R. App. P. 32.1(a) permits citation to unpublished judicial dispositions. Parties citing to such dispositions must comply with Fed. R. App. P. 32.1(b). If a party does not need to submit a copy of an unpublished disposition, the party must provide a citation to the disposition in a publicly accessible electronic database. (Amended Dec. 1, 2002; July 15, 2003; Dec. 1, 2005; Dec. 1, 2006; Dec. 1, 2007; As amended Dec. 1, 2009; amended December 1, 2013; amended December 1, 2016.)

I.O.P.

Miscellaneous Brief Information

(A) *Acknowledgment of Briefs.* — The clerk does not acknowledge the filing of briefs unless counsel or a party makes a special request.

(B) *Sample Briefs and Record Excerpts.* — Upon request, the clerk may loan sample briefs and record excerpts to counsel and non-incarcerated pro se litigants. Because pro se prisoner briefs are not held to the same rigid standards as other briefs, copies of briefs are generally not sent to prisoners. Instead other informational material may be sent. Postage fees may be required before the materials are sent.

(C) *Checklist Available.* — A copy of the checklist used by the clerk in examining briefs is available on request.

FRAP 28.1. Cross-Appeals.

(a) *Applicability.* This rule applies to a case in which a cross-appeal is filed. Rules 28(a)-(c), 31(a)(1), 32(a)(2), and 32(a)(7)(A)-(B) do not apply to such a case, except as otherwise provided in this rule.

(b) *Designation of Appellant.* The party who files a notice of appeal first is the appellant for the purposes of this rule and Rules 30 and 34. If notices are filed on the same day, the plaintiff in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) *Briefs.* In a case involving a cross-appeal:

(1) *Appellant's Principal Brief.* The appellant must file a principal brief in the appeal. That brief must comply with Rule 28(a).

(2) *Appellee's Principal and Response Brief.* The appellee must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That appellee's brief must comply with Rule 28(a), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement.

(3) *Appellant's Response and Reply Brief.* The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 28(a)(2)-(8) and (10), except that none of the following need appear unless the appellant is dissatisfied with the appellee's statement in the cross-appeal:

(A) the jurisdictional statement;

(B) the statement of the issues;

(C) the statement of the case; and

(D) the statement of the standard of review.

(4) *Appellee's Reply Brief.* The appellee may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 28(a)(2)-(3) and (10) and must be limited to the issues presented by the cross-appeal.

(5) *No Further Briefs.* Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's principal brief must be blue; the appellee's principal and response brief, red; the appellant's response and reply brief, yellow; the appellee's reply brief, gray; an intervenor's or amicus curiae's brief, green; and any supplemental brief, tan. The front cover of a brief must contain the information required by Rule 32(a)(2).

(e) *Length.*

(1) *Page Limitation.* Unless it complies with Rule 28.1(e)(2), the appellant's principal brief must not exceed 30 pages; the appellee's principal and response brief, 35 pages; the appellant's response and reply brief, 30 pages; and the appellee's reply brief, 15 pages.

(2) *Type-Volume Limitation.*

(A) The appellant's principal brief or the appellant's response and reply brief is acceptable if it:

(i) contains no more than 13,000 words; or

(ii) uses a monospaced face and contains no more than 1,300 lines of text.

(B) The appellee's principal and response brief is acceptable if it:

(i) contains no more than 15,300 words; or

(ii) uses a monospaced face and contains no more than 1,500 lines of text.

(C) The appellee's reply brief is acceptable if it contains no more than half of the type volume specified in Rule 28.1(e)(2)(A).

(3) *Certificate of Compliance.* A brief submitted under Rule 28.1(e)(2) must comply with Rule 32(a)(7)(C).

(f) *Time to Serve and File a Brief.* Briefs must be served and filed as follows:

(1) the appellant's principal brief, within 40 days after the record is filed;

(2) the appellee's principal and response brief, within 30 days after the appellant's principal brief is served;

(3) the appellant's response and reply brief, within 30 days after the appellee's principal and response brief is served; and

(4) the appellee's reply brief, within 21 days after the appellant's response and reply brief is served, but at least 7 days before argument unless the court, for good cause, allows a later filing. (Adopted effective December 1, 2005; amended effective December 1, 2009; amended effective December 1, 2013; amended effective December 1, 2016; December 1, 2018.)

FRAP 29. Brief of an Amicus Curiae.

(a) *During Initial Consideration of a Case on the Merits.*

(1) *Applicability.* This Rule 29(a) governs amicus filings during a court's initial consideration of a case on the merits.

(2) *When permitted.* The United States or its officer or agency, or a state may file an amicus-curiae brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification.

(3) *Motion for leave to file.* The motion must be accompanied by the proposed brief and state:

(A) the movant's interest; and

(B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(4) *Contents and form.* An amicus brief must comply with Rule 32. In addition to the requirements of Rule 32, the cover must identify the party or parties supported and indicate whether the brief supports affirmance or reversal. An amicus brief need not comply with Rule 28, but must include the following:

(A) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Rule 26.1;

(B) a table of contents, with page references;

(C) a table of authorities — cases (alphabetically arranged), statutes and other authorities — with references to the pages of the brief where they are cited;

(D) a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file;

(E) unless the amicus curiae is one listed in the first sentence of Rule 29(a)(2), a statement that indicates whether:

(i) a party's counsel authored the brief in whole or in part;

(ii) a party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and

(iii) a person - other than the amicus curiae, its members, or its counsel - contributed money that was intended to fund preparing or submitting the brief and, if so identifies each such person;

(F) an argument, which may be proceeded by a summary and which need not include a statement of the applicable standard of review; and

(G) a certificate of compliance, if required by Rule 32(g)(1).

(5) *Length.* Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of an amicus brief.

(6) *Time for filing.* An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(7) *Reply brief.* Except by the court's permission, an amicus curiae may not file a reply brief.

(8) *Oral argument.* An amicus curiae may participate in oral argument only with the court's permission.

(b) *During Consideration of Whether to Grant Rehearing.*

(1) *Applicability.* This Rule 29(b) governs amicus filings during a court's consideration of whether to grant panel rehearing or rehearing en banc, unless a local rule or order in a case provides otherwise.

(2) *When permitted.* The United States or its officer or agency or a state may file an amicus brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court.

(3) *Motion for leave to file.* Rule 29(a)(3) applies to a motion for leave.

(4) *Contents, Form, and Length. Rule 29(a)(4) applies to the amicus brief.* The brief must not exceed 2,600 words.

(5) *Time for Filing.* An amicus curiae supporting the petition for rehearing or supporting neither party must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the petition is filed. An amicus curiae opposing the petition must file its brief, accompanied by a motion for filing when necessary, no later than the date set by the court for the response.

(Amended effective December 1, 2010; amended effective December 1, 2016; December 1, 2018.)

Circuit Rule 29. Brief of an Amicus Curiae.

29.1 Time for Filing Motion. Those wishing to file an amicus curiae brief should file a motion within 7 days after the filing of the principal brief of the party whose position the amicus brief will support.

29.2 Contents and Form. Briefs filed under this rule must comply with the applicable Fed. R. App. P. provisions and with 5th Cir. R. 31 and 32. The brief must include a supplemental statement of interested parties, if necessary to fully disclose all those with an interest in the amicus brief. The brief should avoid the repetition of facts or legal arguments contained in the principal brief and should focus on points either not made or not adequately discussed in those briefs. Any non-conforming brief may be stricken, on motion or sua sponte.

29.3 Length of Briefs. See Fed. R. App. P. 29(a)(5).

29.4 Denial of Amicus Curiae Status. After a panel opinion is issued, amicus curiae status will not be permitted if the allowance would result in the disqualification of any member of the panel or of the en banc court. (Amended July 15, 2003; amended December 1, 2016.)

I.O.P.

See also 5th Cir. R. 31.2.

FRAP 30. Appendix to the briefs.

(a) *Appellant's responsibility.*

(1) *Contents of the appendix.* The appellant must prepare and file an appendix to the briefs containing:

(A) the relevant docket entries in the proceeding below;

(B) the relevant portions of the pleadings, charge, findings, or opinion;

(C) the judgment, order, or decision in question; and

(D) other parts of the record to which the parties wish to direct the court's attention.

(2) *Excluded material.* Memoranda of law in the district court should not be included in the appendix unless they have independent relevance. Parts of the record may be relied on by the court or the parties even though not included in the appendix.

(3) *Time to file; number of copies.* Unless filing is deferred under Rule 30(c), the appellant must file 10 copies of the appendix with the brief and must serve one copy on counsel for each party separately represented. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(b) *All parties' responsibilities.*

(1) *Determining the contents of the appendix.* The parties are encouraged to agree on the contents of the appendix. In the absence of an agreement, the appellant must, within 14 days after the record is filed, serve on the appellee a designation of the parts of the record the appellant intends to include in the appendix and a statement of the issues the appellant intends to present for review. The appellee may, within 14 days after receiving the designation, serve on the appellant a designation of additional parts to which it wishes to direct the court's attention. The appellant must include the designated parts in the appendix. The parties must not engage in unnecessary designation of parts of the record, because the entire record is available to the court. This paragraph applies also to a cross-appellant and a cross-appellee.

(2) *Costs of appendix.* Unless the parties agree otherwise, the appellant must pay the cost of the appendix. If the appellant considers parts of the record designated by the appellee to be unnecessary, the appellant may advise the appellee, who must then advance the cost of including those parts. The cost of the appendix is a taxable cost. But if any party causes unnecessary parts of the record to be included in the appendix, the court may impose the cost of those parts on that party. Each circuit must, by local rule, provide for sanctions against attorneys who unreasonably and vexatiously increase litigation costs by including unnecessary material in the appendix.

(c) *Deferred appendix.*

(1) *Deferral until after briefs are filed.* The court may provide by rule for classes of cases or by order in a particular case that preparation of the appendix may be deferred until after the briefs have been filed and that the appendix may be filed 21 days after the appellee's brief is served. Even though the filing of the appendix may be deferred, Rule 30(b) applies; except that a party must designate the parts of the record it wants included in the appendix when it serves its brief, and need not include a statement of the issues presented.

(2) *References to the record.*

(A) If the deferred appendix is used, the parties may cite in their briefs the pertinent pages of the record. When the appendix is prepared, the record pages cited in the briefs must be indicated by inserting record page numbers, in brackets, at places in the appendix where those pages of the record appear.

(B) A party who wants to refer directly to pages of the appendix may serve and file copies of the brief within the time required by Rule 31(a), containing appropriate references to pertinent pages of the record. In that event, within 14 days after the appendix is filed, the party must serve and file copies of the brief, containing references to the pages of the appendix in place of or in addition to the references to the pertinent pages of the record. Except for the correction of typographical errors, no other changes may be made to the brief.

(d) *Format of the appendix.* The appendix must begin with a table of contents identifying the page at which each part begins. The relevant docket entries must follow the table of contents. Other parts of the record must follow chronologically. When pages from the transcript of proceedings are placed in the appendix, the transcript page numbers must be shown in brackets immediately before the included pages. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) should be omitted.

(e) *Reproduction of exhibits.* Exhibits designated for inclusion in the appendix may be reproduced in a separate volume, or volumes, suitably indexed. Four copies must be filed with the appendix, and one copy must be served on counsel for each separately represented party. If a transcript of a proceeding before an administrative agency, board, commission, or officer was used in a district-court action and has been designated for inclusion in the appendix, the transcript must be placed in the appendix as an exhibit.

(f) *Appeal on the original record without an appendix.* The court may, either by rule for all cases or classes of cases or by order in a particular case, dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the court may order the parties to file.

Circuit Rule 30. Appendix to the briefs.

30.1 Records on Appeal/Record Excerpts/Appendix — Appeals from District Courts, the Tax Court, and Agencies. Appeals from district courts and the Tax Court are decided on the original record on appeal (ROA). The clerk is authorized to require the party receiving the ROA to pay reasonable shipping costs as a condition of receiving the record. Moreover, counsel and unrepresented parties must review the ROA within 20 days of dispatch from the clerk's office and advise electronically or in writing both the appropriate District Court (or the Tax Court, if appropriate) and Fifth Circuit clerk's offices of any errors in, or omissions from, the ROA. Failure to comply may result in a denial of any requested extension of time to file a brief due to an alleged error in, or incomplete ROA. Record excerpts are filed in lieu of the appendix prescribed by Fed. R. App. P. 30. Petitions for review or enforcement of agency orders are governed by 5th Cir. R. 30.2, but parties may be required to pay reasonable shipping costs, and are responsible for timely review of the record and the notification requirements set out above.

30.1.1 Purpose. The record excerpts are intended primarily to assist the judges in making the screening decision on the need for oral argument and in preparing for oral argument. Counsel need excerpt only those parts of the record that will assist in these functions.

30.1.2 Filing. Four paper copies of excerpts of the district court record must accompany the appellant's brief, see 5th Cir. R. 30.1.4 and 30.1.5. If exempt from electronic filing under 5th Cir. R. 25.2, all appellants represented by counsel must file an electronic copy of the record excerpts on a CD, computer diskette, or such other electronic medium as the clerk may authorize. The electronic copy must be in a single Portable Document Format (PDF) file; contain nothing other than the record excerpts; and have as the first page of the electronic copy an index to the contents. If submitted on a CD, diskette, or other authorized physical media, the electronic version must have a label containing the case name and docket number and state "Record Excerpts." The appellant must serve a paper and electronic copy of the excerpts on counsel for each of the parties separately represented; a paper copy on any party proceeding pro se, and an electronic copy, if the pro se party is not an inmate confined in an institution. The appellee may similarly submit and serve additional record excerpts with the appellee's principal brief, with the required copies furnished to the clerk accompanying the appellee's brief.

30.1.3 Prisoner Petitions Without Representation by Counsel. Prisoners without counsel are not required to prepare and file record excerpts.

30.1.4 Mandatory Contents. The record excerpts must contain copies of the following portions of the district court record:

(a) The docket sheet;

(b) The notice of appeal;

(c) The indictment in criminal cases;

(d) The jury's verdict in all cases;

(e) The judgment or interlocutory order appealed;

(f) Any other orders or rulings sought to be reviewed;

(g) Any relevant magistrate judge's report and recommendation;

(h) Any supporting opinion or findings of fact and conclusions of law filed, or transcript pages of any such delivered orally; and

(i) A certificate of service complying with Fed. R. App. P. 25.

30.1.5 Optional Contents. The record excerpts may include those parts of the record, referred to in the briefs including:

(a) Essential pleadings or relevant portions thereof;

(b) The parts of the Fed. R. Civ. P. 16(e) pretrial order relevant to any issue on appeal;

(c) Any jury instruction given or refused that presents an issue on appeal, together with any objection and the court's ruling, and any other relevant part of the jury charge;

(d) Findings and conclusions of the administrative law judge, if the appeal is of a court order reviewing an administrative agency determination;

(e) A copy of the relevant pages of the transcript when the appeal challenges the admission or exclusion of evidence or any other interlocutory ruling or order; and

(f) The relevant parts of any written exhibit (including affidavits) that present an issue on appeal.

30.1.6 Length. The optional contents of the record excerpts must not exceed 40 pages unless authorized by the court.

30.1.7 Form. The record excerpts must:

(a) Have a numbered table of contents, with citation to the record, beginning with the lower court docket sheet;

(b) Be on letter-size, light paper, reproduced by any process that results in a clear black image. Care must be taken to reproduce fully the document filing date column on the docket sheet;

(c) Be tabbed to correspond to the numbers assigned in the table of contents;

(d) Be bound to expose fully the filing date columns and allow the document to lie reasonably flat when opened. The record excerpts must have a durable white cover conforming to Fed. R. App. P. 32(a)(2), except that it will be denominated "RECORD EXCERPTS."

The documents constituting the record excerpts do not need to be certified, but if the clerk's "filed" markings are either absent or not clearly legible, the accurate filing information must be typed or written thereon.

30.1.8. Nonconforming record excerpts. Record excerpts which do not conform to the requirements of this rule will be filed, but must be corrected within the time directed by the clerk. Failure to file corrected record excerpts may result in their being stricken and imposition of sanctions, under 5th Cir. R. 32.5.

30.2 Appendix — Agency Review Proceedings. Petitions for review or enforcement of orders of an administrative agency, board, commission or officer must proceed on the original record on review,without a Fed. R. App. P. 30 required appendix. If a party requests use of the original record, the clerk may require payment of reasonable shipping costs, and the party is responsible for timely review and notification to the agency and the Fifth Circuit clerk's office of any record deficiencies, see 5th Cir. R. 30.1.

(a) If a certified list of documents comprising the record is filed in lieu of the formal record, petitioner must prepare and file with the court and serve on the agency, board, or commission a copy of the portions of the record relied upon by the parties in their briefs. The list of documents must be suitably covered, numbered, and indexed and filed within 21 days of the filing of respondent's brief.

(b) Except in review proceedings covered by 5th Cir. R. 15.3, at the time of filing petitioner's brief, petitioner must file separately 4 copies of any order sought to be reviewed and any supporting opinion, findings of fact, or conclusions of law filed by the agency, board, commission, or officer. (Amended December 1, 2007; as amended December 1, 2009.)

FRAP 31. Serving and filing briefs.

(a) *Time to serve and file a brief.*

(1) The appellant must serve and file a brief within 40 days after the record is filed. The appellee must serve and file a brief within 30 days after the appellant's brief is served. The appellant may serve and file a reply brief within 21 days after service of the appellee's brief but a reply brief must be filed at least 7 days before argument, unless the court, for good cause, allows a later filing.

(2) A court of appeals that routinely considers cases on the merits promptly after the briefs are filed may shorten the time to serve and file briefs, either by local rule or by order in a particular case.

(b) *Number of copies.* Twenty-five copies of each brief must be filed with the clerk and 2 copies must be served on each unrepresented party and on counsel for each separately represented party. An unrepresented party proceeding in forma pauperis must file 4 legible copies with the clerk, and one copy must be served on each unrepresented party and on counsel for each separately represented party. The court may by local rule or by order in a particular case require the filing or service of a different number.

(c) *Consequence of failure to file.* If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee may move to dismiss the appeal. An appellee who fails to file a brief will not be heard at oral argument unless the court grants permission. (Amended effective December 1, 2009; amended effective December 1, 2018.)

Circuit Rule 31. Filing and service of a brief.

31.1 Briefs — Number of Copies; Computer Generated Briefs. Only 7 paper copies of briefs need be filed. Where a party is represented by counsel who is exempt from electronic filing under 5th Cir. R. 25.2, and counsel generates his or her brief by computer, the party also must submit an electronic version of the brief to the court. The filing party must serve unrepresented parties and counsel for separately represented parties in accordance with Fed. R. App. P. 31(b), and also must serve an electronic version of the brief on each party separately represented. However, the parties may agree in writing to waive service of paper copies of the brief and to be served with an electronic copy only. The electronic copy of the brief must be filed on a CD, computer diskette, or such other electronic medium as the clerk may authorize.

The electronic version must:

be prepared in a single Portable Document Format (PDF) file. (Briefs scanned into PDF are not acceptable);

contain nothing other than the brief;

have as the first page of the electronic file a brief cover page as required by Fed. R. App. P. 32(a)(2).

If submitted on a CD, diskette, or other authorized physical media, the electronic version must have a label containing the case name and docket number, and identifying the brief as the appellant's, appellee's, etc.

The proof of service must comply with Fed. R. App. P. 25(d)(1)(B) & (2).

31.2 Briefs — Time for Filing Briefs of Intervenors or Amicus Curiae. The time for filing the brief of the intervenor or amicus is extended until 7 days after the filing of the principal brief of the party supported by the intervenor or amicus.

31.3 Briefs — Time for Mailing or Delivery to a Commercial Carrier. The appellant must send his or her brief to the clerk not later than 40 days after the date of the briefing notice. Pursuant to Fed. R. App. P. 26(c), the appellee has 33 days from the appellant's date of the certificate of service to place the appellee's brief in the mail, file it with the clerk electronically where permitted, or to give it to a third-party commercial carrier for delivery within 3 days. This rule is effective ONLY when the appellant has effected service by mail or via delivery to a commercial carrier for delivery within 3 days and may not be combined with the additional time provisions of FED.R.APP.P. 26(c) to give the appellee 36 days to file a brief. The certificate of service required by Fed. R. App. P. 25(d) is placed in the brief as specified in 5th Cir. R. 28.3, and must be dated. See 5th Cir. R. 39.2 for limitations on recovery of certain mailing and commercial delivery costs.

31.4 Briefs — Time for Filing.

31.4.1 General Provisions. The court expects briefs to be filed timely and without extensions in the vast majority of cases. No extensions are automatic, even where the request is unopposed. Any requests for extensions should be made sparingly. No extension can be granted without good cause shown as required by Fed. R. App. P. 26(b), or without meeting the additional requirements contained in the 5th Cir. R.

(a) A request for extension should be made as soon as it is reasonably possible to foresee the need for the extension. The clerk must receive a request for extension at least 7 days before the due date, unless the movant demonstrates, in detail, that the facts that form the basis of the motion either did not exist earlier or were not and with due diligence could not have been known earlier.

(b) As specified in 5th Cir. R. 27.1, the movant must indicate that all other parties have been contacted and whether the motion is opposed. Movants should request only as much time as is absolutely needed. The pendency of a motion for extension does not toll the time for compliance.

31.4.2 Grounds for Extensions. As justification for extensions, generalities, such as that the purpose of the motion is not for delay or that counsel is too busy, are not sufficient. Grounds that may merit consideration for extensions are, without limitation, the following, which must be set forth if claimed as a reason in any motion for an extension beyond 30 days:

(a) Engagement of counsel in other litigation, provided such litigation is identified by caption, number, and court, and there is set forth:

(1) A description of any effort taken to defer the other litigation and of any ruling thereon;

(2) An explanation of why other litigation should receive priority over the case at hand; and

(3) Other relevant circumstances, including why other associated counsel cannot prepare the brief or relieve the movant's counsel of the other litigation.

(b) The matter is so complex that an adequate brief cannot reasonably be prepared when due.

(c) Extreme hardship will result unless an extension is granted, in which event the nature of the hardship must be set forth in detail.

31.4.3 Levels of Extensions. There are two levels of extensions: a Level 1 extension of 1-30 days from the original due date; and a Level 2 extension of more than 30 days from the original due date.

31.4.3.1 Level 1 Extensions. The clerk is authorized to act on or refer to the court Level 1 extensions. The court prefers that an unopposed request be made by telephone, but it may be by written motion or letter. When making the request, the movant must explain what good cause exists for the extension. If the extension is granted by telephone, the movant will immediately send a confirming letter to the clerk, with copies to all parties.

An opposed request for a Level 1 extension must be made by written motion setting forth why there is good cause. The motion must state the initial due date, whether any other extension has been granted, the length of the requested extension, and which parties have expressed opposition.

31.4.3.2 Level 2 Extensions. The clerk is authorized to act on or refer to the court Level 2 extensions. The request must be made by written motion, with copies to all parties, stating the initial due date, whether any other extension has been granted, the length of the requested extension, and whether the motion is opposed.

More than ordinary good cause is required for a Level 2 extension, and Level 2 extensions will be granted only under the most extraordinary of circumstances. The movant must demonstrate diligence and substantial need and must show in detail what special circumstances exist that make a Level 1 extension insufficient.

31.4.4. Extensions for Reply Briefs. The court greatly disfavors all extensions of time for filing reply briefs. The court assumes that the parties have had ample opportunity to present their arguments in their initial briefs and that extensions for reply briefs only delay submission of the case to the court. (Amended Dec. 1, 2002; July 15, 2003; Nov. 1, 2004; Dec. 1, 2007; As amended Dec. 1, 2009; As amended Dec. 1, 2016.)

I.O.P.

The court continues to receive a large number of motions requesting extensions of time to file briefs, or to file briefs out of time, which are considered extension requests. The majority of these motions were by counsel, and frequently were made in direct criminal appeals which have the longest average processing time from filing the notice of appeal to filing the last brief. To assure that this court decides cases more expeditiously, the court's goals are to: 1) Reduce the number of motions to extend time to file briefs; and 2) To shorten the amount of time granted. In general and absent the most compelling of reasons, no more than 30 days extension of time will be granted in criminal cases and no more than 40 days extension of time will be granted in civil cases.

FRAP 32. Form of briefs, appendices, and other papers.

(a) *Form of a brief.*

(1) *Reproduction.*

(A) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(B) Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.

(C) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) *Cover.* Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the appellee's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(A) the number of the case centered at the top;

(B) the name of the court;

(C) the title of the case (see Rule 12(a));

(D) the nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court, agency, or board below;

(E) the title of the brief, identifying the party or parties for whom the brief is filed; and

(F) the name, office address, and telephone number of counsel representing the party for whom the brief is filed.

(3) *Binding.* The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) *Paper size, line spacing, and margins.* The brief must be on 8½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) *Typeface.* Either a proportionally spaced or a monospaced face may be used.

(A) A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger.

(B) A monospaced face may not contain more than 10½ characters per inch.

(6) *Type styles.* A brief must be set in a plain, roman style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(7) *Length.*

(A) *Page limitation.* A principal brief may not exceed 30 pages, or a reply brief 15 pages, unless it complies with Rule 32(a)(7)(B) and (C).

(B) *Type-volume limitation.*

(i) A principal brief is acceptable if:

- it contains no more than 13,000 words; or
- it uses a monospaced face and contains no more than 1,300 lines of text.

(ii) A reply brief is acceptable if it contains no more than half of the type volume specified in Rule 32(a)(7)(B)(i).

(b) *Form of an appendix.* An appendix must comply with Rule 32(a)(1),(2),(3), and (4), with the following exceptions:

(1) The cover of a separately bound appendix must be white.

(2) An appendix may include a legible photocopy of any document found in the record or of a printed judicial or agency decision.

(3) When necessary to facilitate inclusion of odd-sized documents such as technical drawings, an appendix may be a size other than 8½ by 11 inches, and need not lie reasonably flat when opened.

(c) *Form of other papers.*

(1) *Motion.* The form of a motion is governed by Rule 27(d).

(2) *Other papers.* Any other paper, including a petition for panel rehearing and a petition for hearing or rehearing en banc, and any response to such a petition, must be reproduced in the manner prescribed by Rule 32(a), with the following exceptions:

(A) a cover is not necessary if the caption and signature page of the paper together contain the information required by Rule 32(a)(2). If a cover is used, it must be white.

(B) Rule 32(a)(7) does not apply.

(d) *Signature.* Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

(e) *Local Variation.* Every court of appeals must accept documents that comply with the form requirements of this rule. By local rule or order in a particular case a court of appeals may accept documents that do not meet all of the form requirements of this rule.

(f) *Items Excluded from Length.* In computing any length limit, headings, footnotes, and quotations count toward the limit but the following items do not:

- the cover page;
- a corporate disclosure statement;
- a table of contents;
- a table of citations;
- a statement regarding oral argument;
- an addendum containing statutes, rules, or regulations;
- certificates of counsel;
- the signature block;
- the proof of service; and;
- any item specifically excluded by these rules or by local rule.

(g) *Certificate of Compliance.*

(1) *Briefs and Papers That Require a Certificate.* A brief submitted under Rules 28.1(e)(2), 29(b)(4), or 32(a)(7)(B) — and a paper submitted under Rules 5(c)(1), 21(d)(1), 27(d)(2)(A), 27(d)(2)(C), 35(b)(2)(A), or 40(b)(1) — must include a certificate by the attorney, or an unrepresented party, that the document complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word-processing system used to prepare the document. The certificate must state the number of words --or the number of lines of monospaced type — in the document.

(2) *Acceptable Form.* Form 6 in the Appendix of Forms meets the requirements for a certificate of compliance. (Amended effective December 1, 2005; amended effective December 1, 2016.)

Circuit Rule 32. Form of briefs, the appendix and other papers.

32.1 Typeface. Must comply with Fed. R. App. P. 32(a)(5), except that footnotes may be 12 point or larger in proportionally spaced typeface, or 12½ characters per inch or larger in monospaced typeface.

32.2 Type Volume Limitations. See Fed. R. App. P. 32(a)(7)(B)(iii), and for cross-appeals Fed. R. App. P. 28.1(e). The certificate of interested parties does not count toward the limitation.

32.3 Certificate of Compliance. See Form 6 in the Appendix of Forms to the Fed. R. App. P. A material misrepresentation in the certificate of compliance may result in striking the brief and in sanctions against the person signing the brief.

32.4 Motions for Extra-Length Briefs. A motion to file a brief in excess of the page length or word-volume limitations must be filed at least 10 days in advance of the brief's due date.

32.5 Rejection of Briefs and Record Excerpts. If all copies of briefs and record excerpts do not conform to 5th Cir. R. 28 and 30 and all provisions of Fed. R. App. P. 32, the clerk will file the briefs and record excerpts, but is authorized to return all nonconforming copies. An extension of 10 days is allowed for resubmission in a conforming format. The court may strike briefs and record excerpts if the party fails to submit conforming briefs or record excerpts within 14 days. If at any time the clerk believes the non-conformance is egregious or in bad faith, the clerk, in the alternative to filing the nonconforming matters, may submit them to a single judge, who can reject them and direct that they be returned unfiled. Failure to submit conforming briefs or record excerpts may result in imposition of sanctions. (Amended Dec. 1, 2002; July 15, 2003; Dec. 1, 2005; Dec. 1, 2006; As amended Dec. 1, 2009: Amended effective April 4, 2017, to delete the last two sentences of 32.4.)

I.O.P.

Form of Record Excerpts/Appendix — See 5th Cir. R. 30.

FRAP 32.1. Citing Judicial Dispositions.

(a) *Citation Permitted.* A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(1) designated as "unpublished," "not for publication," "non-precedential," "not precedent," or the like; and

(2) issued on or after January 1, 2007.

(b) *Copies Required.* If a party cites a federal judicial opinion, order, judgment, or other written disposition that is not available in a publicly accessible electronic database, the party must file and serve a copy of that opinion, order, judgment, or disposition with the brief or other paper in which it is cited. (Adopted effective December 1, 2006.)

FRAP 33. Appeal conferences.

The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

I.O.P.

Appeal Conferences — See 5th Cir. R. 15.3.5.

FRAP 34. Oral argument.

(a) *In general.*

(1) *Party's statement.* Any party may file, or a court may require by local rule, a statement explaining why oral argument should, or need not, be permitted.

(2) *Standards.* Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) *Notice of argument; postponement.* The clerk must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed reasonably in advance of the hearing date.

(c) *Order and contents of argument.* The appellant opens and concludes the argument. Counsel must not read at length from briefs, records, or authorities.

(d) *Cross-appeals and separate appeals.* If there is a cross-appeal, Rule 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) *Nonappearance of a party.* If the appellee fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the appellee's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) *Submission on briefs.* The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) *Use of physical exhibits at argument; removal.* Counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes.

After the argument, counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (Amended effective December 1, 2005.)

Circuit Rule 34. Oral argument.

34.1 Docket Control. In the interest of docket control, the chief judge may from time to time appoint a panel or panels to review pending cases for appropriate assignment or disposition under this rule or any other rule of this court.

34.2 Oral Arguments. Oral argument is governed by Fed. R. App. P. 34. Cases not set for oral argument are placed on the summary calendar for decision. The clerk will calendar the oral argument cases based upon the court's calendaring priorities. Counsel for each party must present oral argument unless excused by the court for good cause. The oral argument docket will show the time the court has allotted for each argument. If counsel for all parties indicate that oral argument is not necessary under paragraph .3 of this rule, the case will be governed by Fed. R. App. P. 34(f).

34.3 Submission Without Argument. A party desiring to waive oral argument in a case set for oral argument must file a motion to waive argument at least 7 days before the date set for hearing.

34.4 Number of Counsel To Be Heard. Not more than 2 counsel will be heard for each party on the argument of a case, and the time allowed may be apportioned between counsel in their discretion.

34.5 Expediting Appeals. The court may, on its own motion or for good cause on motion of either party, advance any case for hearing, and prescribe an abbreviated briefing schedule.

34.6 Continuance of Hearing. After a case has been set for hearing, the parties or counsel may not stipulate to delay the hearing. Only the court may delay argument for good cause shown. Engagement of counsel in other courts ordinarily is not considered good cause.

34.7 Recording of Oral Arguments. No cameras, tape recorders, or other equipment designed for the recording or transmission of visual images or sound may be present or used during oral argument without prior court approval. With the advance approval of the presiding judge, counsel may arrange, at their own expense, for a qualified court reporter to record and transcribe oral argument. If it is the court reporter's usual practice, the reporter may make and use a sound recording for the sole purpose of preparing an accurate transcript. The reporter may not make any recordings of the oral argument available to counsel, a party, or any other person until the court posts its recording of the oral argument on the court's Internet website.

34.8 Criminal Justice Act Cases. The court expects court-appointed counsel to present oral argument. An associate attorney not appointed under the act may present argument only under the most pressing and unusual circumstances, and upon the court's advance authorization.

34.9 Checking In with Clerk's Office. On the day of hearing counsel must check in with the clerk 30 minutes before court convenes to confirm the name of the attorney or attorneys who will present argument for each party and how the argument time will be divided between opening and rebuttal. All counsel in the fourth and fifth cases on the docket heard in New Orleans may check in by telephone, but must report in person to the clerk's office within one hour after court convenes. On the last day of a New Orleans session, all attorneys must report in person to the clerk's office 30 minutes before court convenes.

34.10 Submission Without Argument. When a case is placed on the oral argument calendar, a judge of the court has determined that oral argument would be helpful. Therefore, requests of the parties to waive oral argument are not looked upon with favor, and counsel may be excused only by the court for good cause. See 5th Cir. R. 34.3.

If appellant fails to appear in a criminal appeal from conviction, the court will not hear argument from the United States.

34.11 Time for Oral Argument. The time allowed for oral argument is indicated on the printed calendar. Most cases are allowed 20 minutes to the side. The word "side" refers to parties in their position on appeal. Where in doubt, consult the clerk's office.

34.12 Additional Time for Oral Argument. Additional time for oral argument is sparingly permitted. Requests for additional time should be set forth in a motion or letter to the clerk filed well in advance of the oral argument.

34.13 Calling the Calendar. The court usually does not call the calendar unless there are special problems requiring attention. The court hears the cases in the order they appear on the calendar. (Amended effective August 15, 2008; amended December 1, 2009; amended effective May 15, 2015.)

I.O.P.

Screening — Screening is the name given to the method used by the court to determine whether cases should be argued orally or decided on briefs only. This is done under Fed. R. App. P. and 5th Cir. R. 34.

(A) The judges of the court screen cases with assistance from the Staff Attorney. When the last brief is filed, a case is generally sent to the Staff Attorney for prescreening classification. If the staff attorney concludes that the case does not warrant oral argument, a brief memorandum may be prepared and the case returned to the clerk. The clerk then routes the case to 1 of the court's judges, selected in rotation. If that judge agrees that the case does not warrant oral argument, the briefs, together with a proposed opinion, are forwarded to the 2 other judges on the screening panel. If any party requests oral argument, all panel judges must concur that the case does not warrant oral argument, and also in the panel opinion as a proper disposition without any special concurrence or dissent. If no party requests oral argument, all panel judges must concur that the case does not warrant oral argument. However, absent a party's request for oral argument, summary disposition may include a concurrence or a dissent by panel members.

(B) If the staff attorney concludes that oral argument is required, the case is sent to an active judge for screening. If the screening judge agrees, the case is placed on the next appropriate calendar, consistent with the court's calendaring priorities. If the screening judge disagrees with the recommendation for oral argument, that judge's screening panel disposes of the case under the summary calendar procedure.

Decision Without Oral Argument. — When all panel members agree that oral argument of a case is not needed, they advise the clerk the case has been placed on the summary calendar. The court's decision usually accompanies the notice to the clerk.

Court Year Schedule. — The clerk prepares a proposed court schedule for an entire year which is approved by the scheduling proctor and chief judge of the court. The court schedule does not consider what specific cases are to be heard, but only sets the weeks of court in relation to the probable volume of cases and judge power availability for the year.

Judge Assignments

Panel Selection Procedure. — Based on the number of weeks each active judge sits and the number of sittings available from the court's senior judges, and visiting circuit or district judges, the scheduling proctor and clerk create panels of judges for the sessions of the court for the entire court year. The judges are scheduled to avoid repetitive scheduling of panels composed of the same members.

Separation of Assignment of Judges and Calendaring of Cases. — The judge assignments are made available only to the judges for their advance planning of their workload for the forthcoming court year. To insure complete objectivity in the assignment of judges and the calendaring of cases, the two functions of (1) judge assignments to panels and (2) calendaring of cases are carefully separated.

Preparation and Publishing Calendars

General. — The clerk prepares calendars of cases under calendaring guidelines established by the court. Calendars are prepared for the number of sessions (usually between 3 and 5) scheduled for a month. Information about the names of the panel members is not disclosed within the clerk's office until the calendars of cases for the month are actually prepared so that briefs and other materials can be distributed.

Calendaring by Case Type. — The clerk balances the calendars by dividing the cases evenly among the panels by case type so that each panel for a particular month has more or less an equal number of different types of litigation for consideration.

Preference Cases. — The categories of cases listed in 5th Cir. R. 47.7 are given preference in processing and disposition. To assist the clerk in implementing this rule, any party to a civil appeal or review proceeding requiring priority status should notify the clerk and cite the statutory support for the preference.

Non-Preference Cases. — All other cases are calendared for hearing in accordance with the court's "first-in first-out" rule. Unless the court assigns special priority the oldest cases in point of time of availability of briefs are ordinarily calendared first for hearing.

Calendaring for Convenience of Counsel. — For the New Orleans sessions, cases with non-local lawyers are scheduled in the first positions on the calendar whenever possible for their convenience in making departure accommodations.

Number of Cases Assigned. — Unless special provision is made, a regular session of a panel of the court will hear 5 cases per day for 4 days, Monday through Thursday.

Advance Notice. — The court seeks to give counsel 60 days advance notice of cases set for oral argument.

Forwarding Briefs to Judges. — Immediately after formally issuing the calendar the clerk sends the panel members copies of the briefs for the cases set on the calendar.

Pre-Argument Preparation. — The judges invariably read all briefs prior to oral argument.

Identity of Panel. — The clerk may not disclose the names of the panel members for a particular session until 1 week in advance of the session.

Oral Argument

Presenting Argument. — Counsel should prepare their oral arguments knowing the judges have already studied the briefs. Reading from briefs, decisions, or the record is not permitted except in unusual circumstances. Counsel should be prepared to answer the court's questions. The court will consider a motion to extend the time allotted for argument if the court's questions prevent completion of counsel's argument.

Lighting Signal Procedure. — The courtroom deputy will keep track of the time using lighting signals:

(A) Appellant's Argument — A green light signals the beginning of the opening argument of appellant. Two minutes before expiration of the time allowed for opening argument, the green light goes off and a yellow light comes on. When the time reserved for opening argument expires, the yellow light goes off and a red light comes on. If counsel proceeds after the red light, time will be deducted from the rebuttal period.

(B) Appellee's Argument — The same procedure as outlined above is used.

(C) Appellant's Rebuttal — A green light signals commencement of time; a red light comes on when time expires. No yellow light is used.

Case Conferences and Designation of Writing Judge. — The panel hearing the arguments usually confers on the cases at the conclusion of each day's arguments. A tentative decision is reached and the presiding judge assigns responsibility for opinion writing. There is no pre-argument assignment of opinion writing. Judges do not specialize. Assignments are made to equalize the workload of the entire session.

FRAP 35. En banc determination.

(a) *When hearing or rehearing en banc may be ordered.* A majority of the circuit judges who are in regular active service and who are not disqualified may order that an appeal or other proceeding be heard or reheard by the court of appeals en banc. An en banc hearing or rehearing is not favored and ordinarily will not be ordered unless:

(1) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

(2) the proceeding involves a question of exceptional importance.

(b) *Petition for hearing or rehearing en banc.* A party may petition for a hearing or rehearing en banc.

(1) The petition must begin with a statement that either:

(A) the panel decision conflicts with a decision of the United States Supreme Court or of the court to which the petition is addressed (with citation to the conflicting case or cases) and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions; or

(B) the proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

(2) Except by the court's permission:

(A) a petition for an en banc hearing or rehearing produced using a computer must not exceed 3,900 words; and

(B) a handwritten or typewritten petition for an en banc hearing or rehearing must not exceed 15 pages.

(3) For purposes of the page limit in Rule 35(b)(2), if a party files both a petition for panel rehearing and a petition for rehearing en banc, they are considered a single document even if they are filed separately, unless separate filing is required by local rule.

(c) *Time for petition for hearing or rehearing en banc.* A petition that an appeal be heard initially en banc must be filed by the date when the appellee's brief is due. A petition for a rehearing en banc must be filed within the time prescribed by Rule 40 for filing a petition for rehearing.

(d) *Number of copies.* The number of copies to be filed must be prescribed by local rule and may be altered by order in a particular case.

(e) *Response.* No response may be filed to a petition for an en banc consideration unless the court orders a response.

(f) *Call for a vote.* A vote need not be taken to determine whether the case will be heard or reheard en banc unless a judge calls for a vote. (Amended effective December 1, 2005; amended effective December 1, 2016.)

Circuit Rule 35. Determination of causes by the court en banc.

35.1 Caution. Counsel are reminded that in every case the duty of counsel is fully discharged without filing a petition for rehearing en banc unless the case meets the rigid standards of Fed. R. App. P. 35(a). As is noted in Fed. R. App. P. 35, en banc hearing or rehearing is not favored. Among the reasons is that each request for en banc consideration must be studied by every active judge of the court and is a serious call on limited judicial resources. Counsel have a duty to the court commensurate with that owed their clients to read with attention and observe with restraint the standards of Fed. R. App. P. 35(b)(1). The court takes the view that, given the extraordinary nature of petitions for en banc consideration, it is fully justified in imposing sanctions on its own initiative under, *inter alia*, Fed. R. App. P. 38 and 28 U.S.C. § 1927, upon the person who signed the petitions, the represented party, or both, for manifest abuse of the procedure.

35.2 Form of Petition. Twenty copies of every petition for en banc consideration, whether upon initial hearing or rehearing, must be filed. The petition must not be incorporated in the petition for rehearing before the panel, if one is filed, but must be complete in itself. In no case will a petition for en banc consideration adopt by reference any matter from the petition for panel rehearing or from any other briefs or motions in the case. A petition for en banc consideration must contain the following items, in order:

35.2.1 Certificate of interested persons required for briefs by 5th Cir. R. 28.2.1.

35.2.2 If the party petitioning for en banc consideration is represented by counsel, a statement as set forth in Fed. R. App. P. 35(b)(1).

35.2.3 Table of contents and authorities.

35.2.4 Statement of the issue or issues asserted to merit en banc consideration. It will rarely occur that these will be the same as those appropriate for panel rehearing. A petition for en banc consideration must be limited to the circumstances enumerated in Fed. R. App. P. 35(a).

35.2.5 Statement of the course of proceedings and disposition of the case.

35.2.6 Statement of any facts necessary to the argument of the issues.

35.2.7 Argument and authorities. These will concern only the issues required by paragraph (.2.4) hereof and shall address specifically, not only their merit, but why they are contended to be worthy of en banc consideration.

35.2.8 Conclusion.

35.2.9 Certificate of service.

35.2.10 A copy of the opinion or order sought to be reviewed. The opinion or order will be bound with the petition and shall not be marked or annotated.

35.3 Response to Petition. No response to a petition for en banc consideration will be received unless requested by the court.

35.4 Time and Form — Extensions. Any petition for rehearing en banc must be received in the clerk's office within the time specified in Fed. R. App. P. 40. Counsel should not request extensions of time except for the most compelling reasons.

35.5 Length. See Fed. R. App. P. 35(b)(2). The statement required by Fed. R. App. P. 35(b)(1) is included in the limit and is not a "certificate[ ]of counsel" that is excluded Fed. R. App. P. 32(f).

35.6 Determination of Causes En Banc and Composition of En Banc Court. A cause will be heard or reheard en banc when it meets the criteria for en banc set out in Fed. R. App. P. 35(a).

The en banc court will be composed of all active judges of the court plus any senior judge of the court who participated in the panel decision who elects to participate in the en banc consideration. This election is to be communicated timely to the chief judge and clerk. Any judge participating in an en banc poll, hearing, or rehearing while in regular active service who subsequently takes senior status may elect to continue participating in the final resolution of the case. (Amended July 15, 2003; Dec. 1, 2005; As amended Dec. 1, 2009; As amended April 2, 2018.)

I.O.P.

Petition for Rehearing En Banc

Extraordinary Nature of Petitions for Rehearing En Banc. — A petition for rehearing en banc is an extraordinary procedure that is intended to bring to the attention of the entire court an error of exceptional public importance or an opinion that directly conflicts with prior Supreme Court, Fifth Circuit or state law precedent, subject to the following: Alleged errors in the facts of the case (including sufficiency of the evidence) or in the application of correct precedent to the facts of the case are generally matters for panel rehearing but not for rehearing en banc.

The Most Abused Prerogative. — Petitions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit. Fewer than 1% of the cases decided by the court on the merits are reheard en banc; and frequently those rehearings granted result from a request for en banc reconsideration by a judge of the court rather than a petition by the parties.

Handling of Petition by the Judges

Panel Has Control. — Although each panel judge and every active judge receives a copy of the petition for rehearing en banc, the filing of a petition for rehearing en banc does not take the case out of the control of the panel deciding the case. A petition for rehearing en banc is treated as a petition for rehearing by the panel if no petition is filed. The panel may grant rehearing without action by the full court.

Requesting a Poll. — Within 10 calendar days of the filing of the petition, any active judge of the court or any member of the panel rendering the decision, who desires that the case be reheard en banc, may notify the writing judge (the senior active Fifth Circuit judge if the writing judge is a non-active member) to this effect on or before the date shown on the clerk's form that transmits the suggestion. This notification is also notice that if the panel declines to grant rehearing, an en banc poll is desired.

If the panel decides not to grant the rehearing after such notice, it notifies the chief judge, who then polls the court by written ballot on whether en banc rehearing should be granted.

Requesting a Poll on Court's Own Motion. — Any active member of the court or any member of the panel rendering the decision may request a poll of the active members of the court whether rehearing en banc should be granted, whether or not a party filed a petition for rehearing en banc. A requesting judge ordinarily sends a letter to the chief judge with copies to the other active judges of the court and any other panel member.

Polling the Court. — When a request to poll the court is made, each active judge of the court casts a ballot and sends a copy to all other active judges of the court and any senior Fifth Circuit judge who is a panel member. The ballot indicates whether the judge voting desires oral argument if en banc is granted.

Negative Poll. — If the vote is unfavorable to the grant of en banc consideration, the chief judge advises the writing judge. The panel originally hearing the case then enters an appropriate order.

Affirmative Poll. — If a majority of the judges in active service who are not disqualified, vote for en banc hearing or rehearing, the chief judge instructs the clerk as to an appropriate order. The order indicates a rehearing en banc with or without oral argument has been granted, and specifies a briefing schedule for filing of en banc briefs. The appellant's en banc brief will have a blue cover; The appellee's en banc brief will have a red cover.

Every party must then furnish to the clerk 20 additional copies of every brief the party previously filed.

No Poll Request. — If the specified time for requesting a poll has expired and the writing judge of the panel has not received a request from any active member of the court, or other panel member, the judge may take such action deemed appropriate on the petition. However, in the order disposing of the case and the petition, the panel's order denying the petition for rehearing en banc must show no poll was requested.

Capital Cases. — Consistent with long established legal principle and uniformly followed practice, the filing of a petition for rehearing (or hearing) en banc does not constitute or operate as a stay of execution and does not preclude carrying out an execution.

Timely petitions for rehearing (or hearing) en banc which are filed in a capital case while a scheduled execution date is pending and less than 22 calendar days before the scheduled date will be processed and distributed in the manner prescribed by the chief judge or delegee. The Chief Judge or delegee may order expedited consideration thereof and set a time limit for each judge eligible to vote thereon to advise the chief judge or delegee whether to call for a poll and whether (if a poll is or were to be timely requested by any judge) the judge would vote for or against rehearing (or hearing) en banc, and the petition for rehearing (or hearing) en banc will be disposed of accordingly. If no poll is timely requested, or if a poll results in no rehearing (or hearing) en banc, the panel may enter an order denying rehearing (or hearing) en banc. If a poll results in a grant of rehearing (or hearing) en banc, the chief judge, or delegee, will enter an order staying the execution pending further order of the court.

FRAP 36. Entry of judgment; notice.

(a) *Entry.* A judgment is entered when it is noted on the docket. The clerk must prepare, sign, and enter the judgment:

(1) after receiving the court's opinion — but if settlement of the judgment's form is required, after final settlement; or

(2) if a judgment is rendered without an opinion, as the court instructs.

(b) *Notice.* On the date when judgment is entered, the clerk must serve on all parties a copy of the opinion — or the judgment, if no opinion was written — and a notice of the date when the judgment was entered. (Amended December 1, 2002.)

FRAP 37. Interest on judgment.

(a) *When the court affirms.* Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date when the district court's judgment was entered.

(b) *When the court reverses.* If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

FRAP 38. Frivolous appeal — Damages and costs.

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

JUDICIAL DECISIONS

Repetitive litigation.
Illustrative cases.

Repetitive litigation.

Award of double costs and damages in form of attorney's fees was proper against appellant who had brought to Court of Appeals his third challenge to a 1978 condemnation of certain land by Army Corp of Engineers, since even a cursory examination of law by appellant or his counsel would have reflected that this repeat litigation had no valid legal basis. Uithoven v. United States Army Corps of Eng'rs, 884 F.2d 844 (5th Cir. 1989).

Illustrative cases.

An appeal was frivolous where appellants adopted a brief from companion litigation as their own, which did not address the main issue at hand; appellants' refusal to withdraw their appeal even after being warned that sanctions could be levied, properly resulted in double costs to the appellee. Atwood v. Union Carbide Corp., 847 F.2d 278 (5th Cir. 1988).

An appeal from forfeiture of real property filed under the name of the property itself was frivolous; prior case law states clearly that owners alone have standing to contest forfeiture actions, and legislative history made plain that owners must be people; thus an award of attorneys' fees and court costs was proper. United States v. One Parcel of Real Property with Bldgs., 831 F.2d 566 (5th Cir. 1987).

FRAP 39. Costs.

(a) *Against whom assessed.* The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) *Costs for and against the United States.* Costs for or against the United States, its agency, or officer will be assessed under Rule 39(a) only if authorized by law.

(c) *Costs of copies.* Each court of appeals must, by local rule, fix the maximum rate for taxing the cost of producing necessary copies of a brief or appendix, or copies of records authorized by Rule 30(f). The rate must not exceed that generally charged for such work in the area where the clerk's office is located and should encourage economical methods of copying.

(d) *Bill of costs: objections; insertion in mandate.*

(1) A party who wants costs taxed must — within 14 days after entry of judgment — file with the circuit clerk, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within 14 days after service of the bill of costs, unless the court extends the time.

(3) The clerk must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the district clerk must — upon the circuit clerk's request — add the statement of costs, or any amendment of it, to the mandate.

(e) *Costs on appeal taxable in the district court.* The following costs on appeal are taxable in the district court for the benefit of the party entitled to costs under this rule:

(1) the preparation and transmission of the record;

(2) the reporter's transcript, if needed to determine the appeal;

(3) premiums paid for a bond or other security to preserve rights pending appeal; and

(4) the fee for filing the notice of appeal. (Amended effective December 1, 2009; amended effective December 1, 2018.)

JUDICIAL DECISIONS

Attorneys' fees.

Rule 39(d) encompasses only usual costs of appeal such as docketing fees and preparation and filing of briefs and records and does not include attorney's fees. Seyler v. Seyler, 678 F.2d 29 (5th Cir.

1982); Vasquez v. Fleming, 617 F.2d 334 (3rd Cir. 1980); Davis v. Murphy, 587 F.2d 362 (7th Cir. Wis. 1978); Travelers Indem. Co. v. Rosedale Passenger Lines, 55 F.R.D. 494 (D. Md. 1972).

Circuit Rule 39. Costs.

39.1 Taxable Rates. The cost of reproducing necessary copies of the briefs, appendices, or record excerpts shall be taxed at a rate of actual cost, or $ .15 per page, whichever is less, including cover, index, and internal pages, for any form of reproduction costs. The cost of the binding required by 5th Cir. R. 32.2.3 that mandates that briefs must lie reasonably flat when open shall be a taxable cost but not limited to the foregoing rate. This rate is intended to approximate the current cost of the most economical acceptable method of reproduction generally available; and the clerk will, at reasonable intervals, examine and review it to reflect current rates. Taxable costs will be authorized for up to 15 copies for a brief and 10 copies of an appendix or record excerpts, unless the clerk gives advance approval for additional copies.

39.2 Nonrecovery of Mailing and Commercial Delivery Service Costs. Mailing and commercial delivery fees incurred in transmitting briefs are not recoverable as taxable costs.

39.3 Time for Filing Bills of Costs. The clerk must receive bills of costs and any objections within the times set forth in Fed. R. App. P. 39(d). See 5th Cir. R. 26.1. (Amended July 15, 2003, Dec. 1, 2007; As amended Dec. 1, 2009.)

FRAP 40. Petition for panel rehearing.

(a) *Time to file; contents; answer; action by the court if granted.*

(1) *Time.* Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(2) *Contents.* The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) *Answer.* Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) *Action by the court.* If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

(b) *Form of petition; length.* The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages. Except by the court's permission:

(1) a petition for panel rehearing produced using a computer must not exceed 3,900 words; and

(2) a handwritten or typewritten petition for panel rehearing must not exceed 15 pages. (Amended effective December 1, 2011; amended effective December 1, 2016.)

Circuit Rule 40. Petition for rehearing.

40.1 Copies. Four copies of all petitions for rehearing will be filed. A party seeking panel rehearing must attach to the petition an unmarked copy of the opinion or order sought to be reviewed. If the party contemporaneously files a petition for rehearing en banc and attaches a copy of the opinion or order required by 5th Cir. R. 35.2.10, the party does not have to attach a copy to the petition for panel rehearing.

40.2 Limited Nature of Petition for Panel Rehearing. A petition for rehearing is intended to bring to the attention of the panel claimed errors of fact or law in the opinion. It is not used for reargument of the issue previously presented or to attack the court's well-settled summary calendar procedures. Petitions for rehearing of panel decisions are reviewed by panel members only.

40.3 Length. See Fed. R. App. P. 40(b).

40.4 Time for Filing. The clerk must receive a petition for rehearing within the time prescribed in Fed. R. App. P. 40(a). (Amended July 15, 2003; As amended Dec. 1, 2009.)

I.O.P.

Necessity for Filing. — It is not necessary to file a petition for rehearing in the court of appeals as a prerequisite to filing a petition for certiorari in the Supreme Court of the United States.

Capital Cases. — Consistent with long established legal principle and uniformly followed practice, the filing of a petition for rehearing does not constitute or operate as a stay of execution and does not preclude carrying out an execution.

FRAP 41. Mandate: contents; issuance and effective date; stay.

(a) *Contents.* Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) *When issued.* The court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) *Effective date.* The mandate is effective when issued.

(d) *Staying the Mandate Pending a Petition for Certiorari.*

(1) *Motion to Stay.* A party may move to stay the mandate pending the filing of a petition for a writ of certiorari in the Supreme Court. The motion must be served on all parties and must show that the petition would present a substantial question and that there is good cause for a stay.

(2) *Duration of Stay; Extensions.* The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

(i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or

(ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.

(3) *Security.* The court may require a bond or other security as a condition to granting or continuing a stay of the mandate.

(4) *Issuance of Mandate.* The court of appeals must issue the mandate immediately on receiving a copy of a Supreme Court order denying the petition, unless extraordinary circumstances exist. (Amended effective December 1, 2009; amended effective December 1, 2018.)

JUDICIAL DECISIONS

Stay of mandate.

Under former rule, when mandate had been issued it was too late to stay it; unless court of appeals recalled mandate, court's control over judgment below came to an end after mandate had been issued. Meredith v. Fair, 306 F.2d 374 (5th Cir. 1962), cert. denied, 371 U.S. 828, 83 S. Ct. 49, 9 L. Ed. 2d 668 (1962).

Because of alleged inadequacy of the representation given appellants, court recalled its former mandate affirming their conviction, and entered in its place fresh order and mandate affirming conviction, so as to enable appellants to file a petition for writ of certiorari within 30 days following the entry of judgment, as is required by Supreme Court Rule 22(2). Lacaze v. United States, 457 F.2d 1075 (5th Cir. 1972), cert. denied, 409 U.S. 921, 93 S. Ct. 251, 34 L. Ed. 2d 180 (1972).

Circuit Rule 41. Issuance of mandate; stay of mandate.

41.1 Stay of Mandate — Criminal Appeals. A motion for a stay of the issuance of a mandate in a direct criminal appeal filed under Fed. R. App. P. 41 will not be granted simply upon request. Unless the petition sets forth good cause for stay or clearly demonstrates that a substantial question is to be presented to the Supreme Court, the motion shall be denied and the mandate thereafter issued forthwith.

41.2 Recall of Mandate. Once issued a mandate shall not be recalled except to prevent injustice.

41.3 Effect of Granting Rehearing En Banc. Unless otherwise expressly provided, the granting of a rehearing en banc vacates the panel opinion and judgment of the court and stays the mandate. If, after voting a case en banc, the court lacks a quorum to act on the case for 30 consecutive days, the case is automatically returned to the panel, the panel opinion is reinstated as an unpublished (and hence nonprecedential) opinion, and the mandate is released. To act on a case, the en banc court must have a quorum consisting of a majority of the en banc court as defined in 28 U.S.C. § 46(c).

41.4 Issuance of Mandate in Expedited Appeals or Mandamus Actions. The clerk will issue the mandate forthwith in any expedited appeal of a criminal sentence and in actions denying mandamus relief, unless instructed otherwise by the court. (Amended July 15, 2003; As amended Dec. 1, 2009; as amended October 31, 2011.)

I.O.P.

Absent a motion for stay or a stay by operation of an order, rule, or procedure, mandates will issue promptly on the 8th calendar day after the time for filing a petition for rehearing expires; or after entry of an order denying the petition. As an exception, and by court direction, the clerk shall immediately issue the mandate when the court dismisses a case for failure to prosecute an appeal or for lack of jurisdiction, or in such other instances as the court may direct. The original record and any exhibits will be returned to the clerk of the district court with the mandate.

FRAP 42. Voluntary dismissal.

(a) *Dismissal in the district court.* Before an appeal has been docketed by the circuit clerk, the district court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) *Dismissal in the court of appeals.* The circuit clerk may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

Circuit Rule 42. Voluntary dismissal.

42.1 Dismissal by Appellant. In all cases where the appellant or petitioner files an unopposed motion to withdraw the appeal or agency review proceeding, the clerk will enter an order of dismissal and issue a copy of the order as the mandate.

42.2 Frivolous and Unmeritorious Appeals. If upon the hearing of any interlocutory motion or as a result of a review under 5th Cir. R. 34, it appears to the court that the appeal is frivolous and entirely without merit, the appeal will be dismissed.

42.3 Dismissal for Failure To Prosecute.

42.3.1 In direct criminal appeals proceeding in forma pauperis, the provisions of 5th Cir. R. 42.3.1.1 and 42.3.1.2 apply. In habeas cases, actions filed under 28 U.S.C.S. § 2255, and other prisoner matters proceeding in forma pauperis, the provisions of 5th Cir. R. 42.3.1.1 apply if the appellant is represented by counsel; prisoners proceeding pro se will be given an initial written deadline for filing a certificate of appealability, filing any briefs, for paying fees, or for complying with other directives of the court. If pro se prisoners do not meet the deadline established, or timely request an extension of time, the clerk will dismiss the appeal without further notice, 15 days after the deadline date.

42.3.1.1 Appeals with Counsel. If appellant is represented by appointed or retained counsel, the clerk will issue a notice to counsel that, upon expiration of 15 days from the date of the notice, the appeal may be dismissed for want of prosecution unless prior to that date the default is remedied, and must enter an order directing counsel to show cause within 15 days from the date of the order why disciplinary action should not be taken against counsel. If the default is remedied within that time, the clerk must not dismiss the appeal and may refer to the court the matter of disciplinary action against the attorney. If the default is not remedied within that time, the clerk may enter an order dismissing the appeal for want of prosecution or may refer to the court the question of dismissal. The clerk must refer to the court the matter of disciplinary action against the attorney. The court may refer the matter of disciplinary action to a special master including but not limited to a district or magistrate judge.

42.3.1.2 Appeals without Counsel. The clerk must issue a notice to appellant that 15 days from the date of the notice the appeal will be dismissed for want of prosecution, unless the default is remedied before that date. If the default is remedied within that time, the clerk must not dismiss the appeal.

42.3.2 In all other appeals when appellant fails to order the transcript, fails to file a brief, or otherwise fails to comply with the rules of the court, the clerk must dismiss the appeal for want of prosecution.

42.3.3 In all instances of failure to prosecute an appeal to hearing as required, the court may take such other action as it deems appropriate.

42.3.4 An order dismissing an appeal for want of prosecution must be issued to the clerk of the district court as the mandate.

42.4 Dismissals Without Prejudice. In acting on a motion under 5th Cir. R. 27.1.3 to stay further proceedings, the clerk may enter such appeals or agency review proceedings as dismissed without prejudice to the right of reinstatement of the appeal within 180 days from the date of dismissal. Any party desiring reinstatement, or an extension of the time to seek reinstatement, must notify the clerk in writing within the time period allowed for reinstatement. This procedure does not apply where the stay is sought pending a decision of this court in another case, a decision of the Supreme Court, or a stay on the court's own motion. If the appeal is not reinstated within the period fixed, the appeal is deemed dismissed with prejudice. However, an additional period of 180 days from the date of dismissal will be allowed for applying for relief from a dismissal with prejudice which resulted from mistake, inadvertence, or excusable neglect of counsel or a pro se litigant. (Amended July 15, 2003; As amended Dec. 1, 2009.)

FRAP 43. Substitution of parties.

(a) *Death of a party.*

(1) *After notice of appeal is filed.* If a party dies after a notice of appeal has been filed or while a proceeding is pending in the court of appeals, the decedent's personal representative may be substituted as a party on motion filed with the circuit clerk by the representative or by any party. A party's motion must be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court of appeals may then direct appropriate proceedings.

(2) *Before notice of appeal is filed — Potential appellant.* If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative — or, if there is no personal representative, the decedent's attorney of record — may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(3) *Before notice of appeal is filed — Potential appellee.* If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with Rule 43(a)(1).

(b) *Substitution for a reason other than death.* If a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies.

(c) *Public officer: identification; substitution.*

(1) *Identification of party.* A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name. But the court may require the public officer's name to be added.

(2) *Automatic substitution of officeholder.* When a public officer who is a party to an appeal or other proceeding in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution are to be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may be disregarded. An order of substitution may be entered at any time, but failure to enter an order does not affect the substitution.

JUDICIAL DECISIONS

Public officers.

In civil rights action where change of state administration occurred, there was no logical reason why suit against government official could not be against him in his personal capacity within meaning of Ex parte Young, and yet still be "official" enough to require automatic substitution under Rule 43 and Civil Rule 25, to prevent abatement of action against public officers by Eleventh Amendment. American Civil Liberties Union, Inc. v. Finch, 638 F.2d 1336 (5th Cir. 1982).

FRAP 44. Case involving a constitutional question when the United States or the relevant state is not a party.

(a) *Constitutional challenge to federal statute.* If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

(b) *Constitutional challenge to state statute.* If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

FRAP 45. Clerk's duties.

(a) *General provisions.*

(1) *Qualifications.* The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) *When court is open.* The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays. A court may provide by local rule or by order that the clerk's office be open for specified hours on Saturdays or on legal holidays other than New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

(b) *Records.*

(1) *The docket.* The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

(2) *Calendar.* Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the

clerk must give preference to appeals in criminal cases and to other proceedings and appeals entitled to preference by law.

(3) *Other records.* The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

(c) *Notice of an order or judgment.* Upon the entry of an order or judgment, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) *Custody of records and papers.* The circuit clerk has custody of the court's records and papers. Unless the court orders or instructs otherwise, the clerk must not permit an original record or paper to be taken from the clerk's office. Upon disposition of the case, original papers constituting the record on appeal or review must be returned to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other paper that has been filed. (Amended December 1, 2002; amended December 2, 2005.)

Circuit Rule 45. Duties of clerks.

45.1 Location. The clerk's office is maintained in the city of New Orleans, Louisiana.

45.2 Release of Original Papers. The clerk may release original records or papers without a court order for a limited time upon a party's or counsel's request, to facilitate preparation of a brief in a pending appeal.

45.3 Office To Be Open. The clerk's office is open for business on all days except Saturdays, Sundays, designated federal holidays, and Mardi Gras.

I.O.P.

Office hours are from 8:00 a.m. to 5:00 p.m. central time Monday through Friday.

(A) The clerk's office welcomes telephone inquiries from counsel concerning rules and procedures. Telephone No. (504) 310-7700.

(B) In emergency situations after normal office hours, or on weekends, call the number shown above. An automated attendant provides an option connecting the caller to the emergency duty deputy.

FRAP 46. Attorneys.

(a) *Admission to the bar.*

(1) *Eligibility.* An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before the Supreme Court of the United States, the highest court of a state, another United States court of appeals, or a United States district court (including the district courts for Guam, the Northern Mariana Islands, and the Virgin Islands).

(2) *Application.* An applicant must file an application for admission, on a form approved by the court that contains the applicant's personal statement

showing eligibility for membership. The applicant must subscribe to the following oath or affirmation:

"I, ________, do solemnly swear [or affirm] that I will conduct myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

(3) *Admission procedures.* On written or oral motion of a member of the court's bar, the court will act on the application. An applicant may be admitted by oral motion in open court. But, unless the court orders otherwise, an applicant need not appear before the court to be admitted. Upon admission, an applicant must pay the clerk the fee prescribed by local rule or court order.

(b) *Suspension or disbarment.*

(1) *Standard.* A member of the court's bar is subject to suspension or disbarment by the court if the member:

(A) has been suspended or disbarred from practice in any other court; or

(B) is guilty of conduct unbecoming a member of the court's bar.

(2) *Procedure.* The member must be given an opportunity to show good cause, within the time prescribed by the court, why the member should not be suspended or disbarred.

(3) *Order.* The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

(c) *Discipline.* A court of appeals may discipline an attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with any court rule. First, however, the court must afford the attorney reasonable notice, an opportunity to show cause to the contrary, and, if requested, a hearing.

Circuit Rule 46. Attorneys.

46.1 Admission and Fees. Attorneys must have and maintain a valid underlying license to practice law issued by a governmental licensing authority listed in Fed. R. App. P.46(a)(1) to be admitted and continue to practice before this court. Admission is governed by Fed. R. App. P. 46 and this rule. Attorneys admitted to this court must provide the clerk a valid e-mail and mailing address, as well as a working telephone number, and must provide updated information to the clerk when changes occur. Attorneys are admitted for a period of five years and must, after notice from the clerk, timely apply for readmission. To be admitted or readmitted, an attorney must pay the fee fixed by court order. No fee will be required of an attorney who otherwise has all qualifications for admission and is: appointed to represent an appellant in forma pauperis; appearing on behalf of the United States; or newly graduated from law school, licensed to practice in Louisiana, Mississippi, or Texas, and on orders for extended active duty in the Judge Advocate General's Corps.

46.2 Suspension or Disbarment. In addition to Fed. R. App. P. 46(b), attorneys may be suspended or removed from the roll of attorneys permitted to practice before this court if the appropriate law licensing authority withdraws or suspends the attorney's license to practice law, or the license to practice lapses.

46.3 Entry of Appearance. Attorneys admitted to the bar of this court must enter their appearance in each case in which they participate at the time the case is docketed or upon notice by the clerk. A form for entry of appearance is provided by the clerk. In addition to other pertinent information, the form requires counsel to cite all pending related cases and any cases on the docket of the Supreme Court, or this or any other United States Court of Appeals, which involve a similar issue or issues. Counsel must update such information at the time of briefing. Counsel must also indicate on the form whether the appeal is in a category of cases requiring preference in processing and disposition as set out in 5th Cir. R. 47.7. (Amended Dec. 1, 2002; July 15, 2003; Aug. 15, 2008; As amended Dec. 1, 2009.)

I.O.P.

Disciplinary Action. — Fed. R. App. P. 46(b) and (c) govern the procedures followed to invoke disciplinary action against any member of the bar of this court for failure to comply with the rules of this court, or for conduct unbecoming a member of the bar.

Duties of Court Appointed Counsel. — The Judicial Council of the Fifth Circuit has adopted a plan under the Criminal Justice Act detailing the duties and responsibilities of court appointed counsel. A copy of this plan is available from the clerk.

An appointed counsel may claim compensation for services furnished by a partner or associate within the maximum compensation allowed by the act. However, the court expects court-appointed counsel to take the lead in preparing the brief and presenting oral argument, if argument is allowed. Claims by associate counsel for in-court services and travel expenses incurred in connection therewith are not allowed unless the partner or associate is appointed under the Criminal Justice Act on advance motion and approval by the court.

FRAP 47. Local rules by courts of appeals.

(a) *Local rules.*

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to parties or lawyers regarding practice before a court must be in a local rule rather than an internal operating procedure or standing order. A local rule must be consistent with — but not duplicative of — Acts of Congress and rules adopted under 28 U.S.C.S. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. Each circuit clerk must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) *Procedure when there is no controlling law.* A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

Circuit Rule 47. Other Fifth Circuit Rules.

47.1 Name, Seal and Process.

(a) *Name.* The name of this court is "United States Court of Appeals for the Fifth Circuit."

(b) *Seal.* The seal of this court contains the American eagle encircled with the words "United States Court of Appeals" on the upper part of the outer edge; and the words "Fifth Circuit" on the lower part of the outer edge, running from left to right.

(c) *Writs and Process.* Writs and process of this court are under the seal of the court and signed by the clerk.

47.2 Sessions. Court sessions are held in each of the states constituting the circuit at least once each year. Sessions may be scheduled at any location having adequate facilities. On motion of a party or on the court's own motion, the court may change the hearing of any appeal to another location or time.

47.3 Circuit Executive, Library, and Staff Attorneys.

(a) *Circuit Executive.* The circuit executive's office is maintained at New Orleans, Louisiana. The circuit executive acts as Secretary of the Judicial Council of the Fifth Circuit, provides administrative support to the court, and performs such other duties as the judicial council or the chief judge assigns.

(b) *Library.* A public library is maintained at New Orleans, Louisiana, which is open during hours fixed by the court. Books and materials may not be removed from the library without permission of the librarian. Other libraries may be maintained at such places in the circuit as the court designates.

(c) *Staff Attorneys.* A central staff of attorneys is maintained at New Orleans, Louisiana, to perform such research and record analysis as the court directs.

47.4 Bankruptcy Appeals.

47.4.1 The Fed. R. App. P. and 5th Cir. R. apply to all appeals from United States Bankruptcy Courts to this court.

47.4.2 Appeals docketed in the district court or with the clerk of any authorized appellate panels, may not be transferred to this court unless the district judge or appellate panel approves the transfer in writing.

47.5 Publication of Opinions.

47.5.1 Criteria for Publication. The publication of opinions that merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession. However, opinions that may in any way interest persons other than the parties to a case should be published. Therefore, an opinion is published if it:

(a) Establishes a new rule of law, alters, or modifies an existing rule of law, or calls attention to an existing rule of law that appears to have been generally overlooked;

(b) Applies an established rule of law to facts significantly different from those in previous published opinions applying the rule;

(c) Explains, criticizes, or reviews the history of existing decisional or enacted law;

(d) Creates or resolves a conflict of authority either within the circuit or between this circuit and another;

(e) Concerns or discusses a factual or legal issue of significant public interest; or

(f) Is rendered in a case that has been reviewed previously and its merits addressed by an opinion of the United States Supreme Court.

An opinion may also be published if it:

Is accompanied by a concurring or dissenting opinion; or reverses the decision below or affirms it upon different grounds.

47.5.2 Publication Decision. An opinion will be published unless each member of the panel deciding the case determines that its publication is neither required nor justified under the criteria for publication. If any judge of the court or any party so requests the panel will reconsider its decision not to publish an opinion. The opinion will be published if, upon reconsideration, each member of the panel determines that it meets one or more of the criteria for publication or should be published for any other good reason, and the panel issues an order to publish the opinion.

47.5.3 Unpublished Opinions Issued Before January 1, 1996. Unpublished opinions issued before January 1, 1996, [Effective date of amended Rule] are precedent. Although every opinion believed to have precedential value is published, an unpublished opinion may be cited pursuant to Fed. R. App. P. 32.1(a). The party citing to an unpublished judicial disposition must provide a citation to the disposition in a publicly accessible electronic database. If the disposition is not available in an electronic database, a copy of any unpublished opinion cited in any document being submitted to the court, must be attached to each copy of the document, as required by Fed. R. App. P. 32.1(b).

47.5.4 Unpublished Opinions Issued on or After January 1, 1996. Unpublished opinions issued on or after January 1, 1996, [Effective date of amended Rule] are not precedent, except under the doctrine of res judicata, collateral estoppel or law of the case (or similarly to show double jeopardy, abuse of the writ, notice, sanctionable conduct, entitlement to attorney's fees, or the like). An unpublished opinion may, however, be persuasive. An unpublished opinion may be cited, pursuant to Fed. R. App. P. 32.1(a). The party citing to an unpublished judicial disposition should provide a citation to the disposition in a publicly accessible electronic database. If the disposition is not available in an electronic database, a copy of any unpublished opinion cited in any document being submitted to the court must be attached to each copy of the document, as required by Fed. R. App. P. 32.1(b). The first page of each unpublished opinion bears the following legend:

Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.

47.5.5 Definition of "Published." An opinion is considered as "published" for purposes of this rule when the panel deciding the case determines, in accordance with 5th Cir. R. 47.5.2, that the opinion will be published and the opinion is issued.

47.6 Affirmance Without Opinion. The judgment or order may be affirmed or enforced without opinion when the court determines that an opinion would have no precedential value and that any one or more of the following circumstances exists and is dispositive of a matter submitted for decision: (1) that a judgment of the district court is based on findings of fact that are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) in the case of a summary judgment, that no genuine issue of material fact has been properly raised by the appellant; and (5) no reversible error of law appears. In such case, the court may, in its discretion, enter either of the following orders: "AFFIRMED. See 5th Cir. R. 47.6." or "ENFORCED. See 5th Cir. R. 47.6."

47.7 Calendaring Priorities. The following categories of cases are given preference in processing and disposition: (1) appeals in criminal cases, (2) habeas corpus petitions and motions attacking a federal sentence, (3) proceedings involving recalcitrant witnesses before federal courts or grand juries under 28 U.S.C.S. § 1826, (4) actions for temporary or preliminary injunctive relief, and (5) any other action if good cause therefor is shown. (Fed. R. App. P. 45(b) and 28 U.S.C.S. § 1657).

47.8 Attorney's Fees.

47.8.1 Supporting Requirements. Petitions or motions for the award of attorney's fees should always be supported by contemporaneous time records recording all work for which a fee is claimed and reflecting the hours or fractional hours of work done and the specific professional level of services performed by each lawyer seeking compensation. In the absence of such records, time expended will not be considered in setting the fee beyond the minimum amount necessary in the court's judgment for any lawyer to produce the work seen in court. Exceptions may be made only to avoid an unconscionable result.

The clerk will make reasonable efforts to advise counsel about this rule, but whether or not counsel has been advised, ignorance of this rule is not, standing alone, grounds for an exception. If the reasonableness of the hours claimed on the basis of time records becomes an issue, the applicant must make time records available for inspection by opposing counsel and, if a dispute is not resolved between them, by the court.

47.8.2 Attorney's Fees and Expenses Under the Equal Access to Justice Act. This rule implements the provisions of the Equal Access to Justice Act, Public Law No. 96-481, 94 Stat. 2325 (1980).

(a) Applications to the Court of Appeals. An application for an award of fees and expenses pursuant to 28 U.S.C.S. § 2412(d)(1)(B) must identify the applicant and the proceeding for which an award is sought. The application must show the nature and extent of services provided in this court and that the applicant has prevailed, and must identify the position of the United States or an agency thereof that the applicant alleges was not substantially justified.

(b) Petitions by Permission. A petition for leave to appeal pursuant to 5 U.S.C.S. § 504(c)(2) must be filed with the clerk of the court of appeals within 30 days after the entry of the agency's order, with proof of service on all other parties to the agency's proceedings.

(c) The petition must contain a copy of the order to be reviewed and any findings of fact, conclusions of law, and opinion relating thereto, a statement of the facts necessary to an understanding of the petition, and a memorandum showing why the petition for permission to appeal should be granted. An answer may be filed within 30 days after service of the petition, unless otherwise directed by the court. The application and any answer will be submitted without further briefing and oral argument unless otherwise ordered.

(d) An original and 3 copies must be filed with the court.

(e) Within 10 days after the entry of an order granting permission to appeal, the applicant must pay the clerk of this court the docket fee prescribed by the Judicial Conference of the United States. Upon receipt of the payment, the clerk will enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Fed. R. App. P. 17. A notice of appeal need not be filed.

(f) Appeals/Petitions to Review. Appeals and petitions to review matters otherwise contemplated by the Equal Access to Justice Act may be filed pursuant to the applicable statutes and rules of the court.

47.9 Rules for Judicial — Conduct and Judicial Disability Proceedings.

See separately published Judicial Council of the Fifth Circuit Rules for Judicial-Conduct or Judicial-Disability effective May 4, 2008.

47.10 Rule Governing Appeals Raising Sentencing Guidelines Issues — 18 U.S.C.S. § 3742.

47.10.1 Scope of Rules. These rules govern procedures in appeals raising sentencing issues pursuant to 18 U.S.C.S. § 3742(a) or (b). These cases will proceed in the same manner and under the general rules of court governing other appeals and will not be given special expedited treatment over other criminal cases, except as hereinafter specified.

47.10.2 Motion to Expedite. If the defendant is incarcerated for a period of 1 year or less pursuant to the sentence appealed, a party may file a motion to expedite the appeal upon a showing of irreparable harm. The motion must set out: (a) when the trial transcript can be prepared and made available; and, (b) how soon thereafter appellant can file a brief. The court disfavors bifurcation of issues concerning sentencing from those issues involving the conviction.

47.10.3 The Appellate Record.

(a) *Oral Reasons for Imposition of Sentence.* The oral statement of reasons of the district court for imposition of a sentence as required by 18 U.S.C.S. § 3553(c), as amended, must be reduced to writing, filed, and incorporated in the record on appeal.

(b) *Transcript of Sentencing Proceedings.* In addition to the requirements of Fed. R. App. P. 10(b) and 5th Cir. R. 10.1 for ordering the transcript of trial proceedings, appellant is required to order a transcript of the entire sentencing proceeding (excluding the oral statement of reasons for sentencing of the district court) if a sentencing issue under 18 U.S.C.S. § 3742 will be raised on appeal.

(c) *Presentence Report.* If a notice of appeal is filed as authorized by 18 U.S.C. § 3742(a) and (b) for review of a sentence, the clerk will transmit to this court the presentence report. The report is transmitted separately from other parts of the record on appeal and is labeled as a sealed record if sealed by the district court.

(d) Presentence reports filed in this court as part of a record on appeal are treated as matters of public record except where the report, or a portion thereof was sealed by order of the district court.

(e) Counsel wishing access to, or a copy of, sealed presentence reports, or portions of such reports, may request them from the clerk's office by such means as the clerk permits. Counsel must return the copy of the presentence report, without duplicating it. Counsel should avoid disclosure of confidential matters in their public filings. (Amended Dec. 1, 2002; July 15, 2003, Nov. 1, 2004; Dec. 1, 2006; As amended Dec. 1, 2009.)

FRAP 48. Masters.

(a) *Appointment; powers.* A court of appeals may appoint a special master to hold hearings, if necessary, and to recommend factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, those powers include, but are not limited to, the following:

(1) regulating all aspects of a hearing;

(2) taking all appropriate action for the efficient performance of the master's duties under the order;

(3) requiring the production of evidence on all matters embraced in the reference; and

(4) administering oaths and examining witnesses and parties.

(b) *Compensation.* If the master is not a judge or court employee, the court must determine the master's compensation and whether the cost is to be charged to any party.

I.O.P.

OTHER INTERNAL OPERATING PROCEDURES

Judicial Council. — The judicial council established by 28 U.S.C. § 332 is composed of 19 judges — the chief circuit judge, nine circuit judges, and nine district judges. The chief circuit judge and the active circuit judge next in seniority serve permanent terms. All other council members serve for staggered three-year terms. The council meets on call of the chief circuit judge pursuant to statute.

Judicial Conference. — Pursuant to 28 U.S.C. § 333, the chief circuit judge may summon biennially or annually the federal judges of the circuit to a conference, at a designated time and place, for the purpose of considering the state of business of the courts and advising means of improving the administration of justice within the circuit. A copy of the court's rule for representation and active participation of the members of the bar of the circuit is available from the clerk or circuit executive.

Lawyers Advisory Committee. — The court is assisted in its rule-making function and in the drafting of these Internal Operating Procedures by a committee composed of 2 lawyers from each state in the circuit. These lawyers are appointed for staggered terms by the chief judge upon recommendation of the circuit judges from that state. Their terms are for 2 years. They examine and comment upon suggested rule and procedure changes.

Recusal or Disqualification of Judges.

(A) Grounds — Judges may recuse themselves under any circumstances considered sufficient to require such action. Judges must disqualify themselves under circumstances set forth in 28 U.S.C. § 455, or in accordance with Canon 3C, Code of Conduct for United States Judges as adopted by the Judicial Conference of the United States.

(B) Procedure

(1) Administrative Motions — If an initiating judge recuses himself or herself from considering, or is disqualified to consider an administrative motion, he or she will notify the clerk, who will advise the recused judge of the next initiating judge and request that the file be sent to that judge.

(2) Summary Calendar Cases — The above procedure is followed, except that the substitute or backup judge is called because it is court practice that cases are not ordinarily disposed of on the merits by only 2 judges.

(3) Hearing Calendar Cases — Prior to the formal publication of the court calendar, each judge on the panel is furnished with a copy of the 5th Cir. R. 28.2.1 certificate of interested persons for the judge's study to determine whether recusal or disqualification is appropriate.

(C) If a judge recuses, or is disqualified, he or she immediately notifies the other members of the panel, and arrangements are made for a substitute judge.

SPECIAL PANELS AND CASES REQUIRING SPECIAL HANDLING

Corporate Reorganization — Chapter 11.

The first appeal is handled in the usual manner. Counsel must state in their briefs whether the proceeding is likely to be complex and protracted so that the panel can determine whether it should enter an order directing that it will be the permanent panel for subsequent appeals in the same matter. If there are likely to be successive appeals, a single panel may thus become fully familiar with the case thus making the handling of future appeals more expeditious and economical for litigants, counsel and the court. (For the rule regarding direct appeals in bankruptcy matters see 5th Cir. R. 47.4).

Criminal Justice Act Plan. The court has adopted a plan and guidelines under the Criminal Justice Act. Copies are available from the clerk.

Certified Records for Supreme Court of the United States. The clerk's office does not prepare a certified record unless counsel specifically requests it or the Clerk of the United States Supreme Court so directs. (See generally Sup. Ct. R. 12.7, 16.2, and 19.4).

Building Security.

(A) Reasons for Building Security — These rules are to minimize interference with and disruptions of the court's business, to preserve decorum in conducting the court's business and to provide effective security in the John Minor Wisdom United States Court of Appeals Building and garage located at 600 Camp Street, New Orleans, Louisiana. These entire premises are called The Building.

(B) Security Personnel — The term "Security Personnel" means the U.S. Marshal or Deputy Marshal, Court Security Officer, or a member of the Federal Protective Service Police.

(C) Carrying of Parcels, Bags, and Other Objects — Security Personnel shall inspect all objects carried by persons entering The Building. No one shall enter or remain in The Building without submitting to an inspection.

(D) Search of Persons — Security personnel may search any person entering The Building or any space in it. Anyone who refuses a search must be denied entry.

(E) Unseemly Conduct — No person shall:

(1) Loiter, sleep or conduct oneself in an unseemly or disorderly manner in The Building;

(2) Interfere with or disturb the conduct of the court's business in any manner;

(3) Eat or drink in the halls of The Building or in any courtrooms except at court approved social functions;

(4) Block any entrance to or exit from The Building or interfere in any person's entry into or exit from The Building.

(F) Entering and Leaving — All persons must enter and leave courtrooms only through such doorways and at such times as are designated by the Security Personnel.

(G) Spectators — The entrance and departure of spectators to or from courtrooms is subject to the presiding judge's directions. The U. S. Marshal may designate spectator seating in any courtroom. Spectators excluded because of lack of seating and spectators leaving the courtroom while court is in session or any recess shall not loiter or remain in the area adjacent to the courtroom.

(H) Cameras and Electronic Equipment — No person shall introduce or attempt to introduce any type of camera, recording equipment, or other type of electrical or electronic device into The Building without the court's permission.

(I) Weapons — Except for Security Personnel, no person shall be admitted to or allowed to remain in The Building with any object that might be employed as a weapon unless authorized in writing by the court to do so.

(J) Enforcement — Security Personnel shall enforce these security provisions and any other provisions the court might implement. Attorneys and parties who violate these provisions are subject to, inter alia, contempt proceedings and sanctions.

I.O.P.

APPENDIX OF FORMS.

Form 1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court.

United States District Court for the
______ District of ______
File Number __________

A.B., Plaintiff)
)
v.)
) Notice of Appeal
)
C.D., Defendant)

Notice is hereby given that (here name all parties taking the appeal), (plaintiffs) (defendants) in the above named case, * hereby appeal to the United States Court of Appeals for the ______ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the ____ day of __________, 20 ___.

(s) ____________________
Attorney for ____________________
Address: ____________________

* See Rule 3(c) for permissible ways of identifying appellants. (As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court.

UNITED STATES TAX COURT
Washington, D.C.

A.B., Petitioner)
)
v.) Docket No. ________
)
Commissioner of Internal)
Revenue, Respondent)

Notice of Appeal

Notice is hereby given that (here name all parties taking the appeal)* hereby appeal to the United States Court of Appeals for the _____ Circuit from (that part of) the decision of this court entered in the above captioned proceeding on the _____ day of _______, 20 ____ (relating to _______).

(s) ____________________
Counsel for ____________________
Address: ____________________

[Note to inmate filers: If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1) , complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.]

* See Rule 3(c) for permissible ways of identifying appellants. (As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003; April 28, 2016, eff. Dec. 1, 2016.)

Form 3. Petition for Review of Order of an Agency, Board, Commission or Officer.

United States Court of Appeals
for the _______ Circuit

A.B., Petitioner)
)
v.) Petition for Review
XYZ Commission,)
Respondent)

(here name all parties bringing the petition) * hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on _______, 20 ____.

(s) ____________________________
Attorney for Petitioners
Address: ____________________________

* See Rule 15. (As amended Apr. 22, 1993, eff. Dec. 1, 1993; Mar. 27, 2003, eff. Dec. 1, 2003.)

Form 4. Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis.

United States District Court for the _______ District of _______

____

v. Case No. ___________

____

Affidavit in Support of Motion	Instructions
I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. 28 § U.S.C. 1746; 18 U.S.C § 1621.)	Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name,

your case's docket number, and
the question number.

Signed: ______________________ Date: ______________________

My issues on appeal are: ______________________

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ ____	$ ____	$ ____	$ ____
Self-employment	$ ____	$ ____	$ ____	$ ____
Income from real property (such as rental income)	$ ____	$ ____	$ ____	$ ____
Interest and dividends	$ ____	$ ____	$ ____	$ ____
Gifts	$ ____	$ ____	$ ____	$ ____
Alimony	$ ____	$ ____	$ ____	$ ____
Child support	$ ____	$ ____	$ ____	$ ____
Retirement (such as social security, pensions, annuities, insurance)	$ ____	$ ____	$ ____	$ ____
Disability (such as social security, insurance payments)	$ ____	$ ____	$ ____	$ ____
Unemployment payments	$ ____	$ ____	$ ____	$ ____
Public-assistance (such as welfare)	$ ____	$ ____	$ ____	$ ____
Other (specify): ____	$ ____	$ ____	$ ____	$ ____
Total monthly income	$ ____	$ ____	$ ____	$ ____

2. List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
________	________	________	________
________	________	________	________
________	________	________	________

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
________	________	________	________

Employer	Address	Dates of employment	Gross monthly pay
________	________	________	________
________	________	________	________

4. How much cash do you and your spouse have? $ ________
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
________	________	$________	$________
________	________	$________	$________
________	________	$________	$________

If you are a prisoner, seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home (Value)	Other real estate (Value)	Motor Vehicle #1 (Value)
________	________	Make & year: ________
________	________	Model: ________
________	________	Registration #: ________
Motor Vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
Make & year: ________	________	________
Model: ________	________	________
Registration #: ________	________	________

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
________	________	________
________	________	________
________	________	________

7. State the persons who rely on you or your spouse for support.

Name (or, if under 18, initials only)	Relationship	Age
________	________	________
________	________	________
________	________	________

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are

made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real-estate taxes included? ☐ Yes ☐ No Is property insurance included? ☐ Yes ☐ No	$ ________	$ ________
Utilities (electricity, heating fuel, water, sewer, and Telephone)	$ ________	$ ________
Home maintenance (repairs and upkeep)	$ ________	$ ________
Food	$ ________	$ ________
Clothing	$ ________	$ ________
Laundry and dry-cleaning	$ ________	$ ________
Medical and dental expenses	$ ________	$ ________
Transportation (not including motor vehicle payments)	$ ________	$ ________
Recreation, entertainment, newspapers, magazines, etc.	$ ________	$ ________
Insurance (not deducted from wages or included in Mortgage payments)	$ ________	$ ________
Homeowner's or renter's	$ ________	$ ________
Life	$ ________	$ ________
Health	$ ________	$ ________
Motor vehicle	$ ________	$ ________
Other: ________	$ ________	$ ________
Taxes (not deducted from wages or included in Mortgage payments) (specifiy): ________	$ ________	$ ________
Installment payments	$ ________	$ ________
Motor Vehicle	$ ________	$ ________
Credit card (name): ________	$ ________	$ ________
Department store (name): ________	$ ________	$ ________
Other: ________	$ ________	$ ________
Alimony, maintenance, and support paid to others	$ ________	$ ________
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ ________	$ ________
Other (specify): ________	$ ________	$ ________
Total monthly expenses:	$ ________	$ ________

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☐ No If yes, describe on an attached sheet.

10. Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit? ☐ Yes ☐ No

If yes, how much $ ____________

11. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

____

____

____

12. State the [city and state] of your legal residence.

____

____

Your daytime phone number: (___) ______________

Your age: ______ Your years of schooling: ______

(As amended Apr. 24, 1998, eff. Dec. 1, 1998; amended effective December 1, 2010; amended effective December 1, 2013; amended effective December 1, 2018)

Form 5. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court or a Bankruptcy Appellate Panel.

United States District Court for the
_______ District of _______

In re)
__________________,)
Debtor)
)
__________________,)
Plaintiff) File No. _______
)
v.)
)
__________________,)
Defendant)

Notice of Appeal to
United States Court of Appeals
for the _____ Circuit

_________, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _______ Circuit from the final judgment [or order or decree] of the district court for the district of _______ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _______, 20 ___ [here describe the judgment, order, or decree] _______.

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated
____
Signed
____

Attorney for Appellant
Address:
____
____

[Note to inmate filers: If you are an inmate confined in an institution and you seek the timing benefit of Fed. R. App. P. 4(c)(1), complete Form 7 (Declaration of Inmate Filing) and file that declaration along with this Notice of Appeal.] (As added Apr. 25, 1989, eff. Dec. 1, 1989; amended Mar. 27, 2003, eff. Dec. 1, 2003; amended April 28, 2016, eff. Dec. 1, 2016.)

Form 6. Certificate of Compliance with Rule 32(a).

Certificate of Compliance with Type-Volume Limit, Typeface Requirements, and Type Style Reguirements.

1. This document complies with [the type-volume limit of Fed. R. App. P. [insert Rule citation; e.g., 32(a)(7)(B)]] [the word limit of Fed. R. App. P. [insert Rule citation; e.g., 5(c)(1)]] because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) [and [insert applicable Rule citation, if any]]:

☐ this document contains [state the number of] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), or

☐ this brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

☐ this document has been prepared in a proportionally spaced typeface using [state name and version of word processing program] in [state font size and name of type style], or

☐ this brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

(s) ____________________________________
Attorney for ____________________________________
Dated: ____________________________________
(As added Apr. 29, 2002, eff. Dec. 1, 2002; amended effective December 1, 2016)

Form 7. FORM 7. DECLARATION OF INMATE FILING.

____
[*insert name of court; for example, United States District Court for the District of Minnesota*]

A.B., Plaintiff)
)
v.)
) Case No. __________

)
C.D., Defendant)

I am an inmate confined in an institution. Today, __________ [*insert date*], I am depositing the ________________ [*insert title of document; for example, "notice of appeal =ro" in this case in the institution's internal mail system. First-class postage is being prepaid either by me or by the institution on my behalf.*

I declare under penalty of perjury that the foregoing is true and correct (see 28 U.S.C. § 1746; 18 U.S.C. § 1621).

Sign your name here ________________________

Signed on ________________ [*insert date*]

[***Note to inmate filers:*** *If your institution has a system designed for legal mail, you must use that system in order to receive the timing benefit of FED. R. App. P. 4(c)(1) or FED. R. APP. P. 25(a)(2)(A)(iii).*] (Added April 28, 2016, eff. Dec. 1, 2016; amended April 26, 2018, eff. Dec. 1, 2018.)

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RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS

Effective April 10, 2008; Amended September 17, 2015; Amended March 12, 2019

Preface

These Rules were promulgated by the Judicial Conference of the United States, after public comment, pursuant to 28 U.S.C. §§ 331 and 358, to establish standards and procedures for addressing complaints filed by complainants or identified by chief judges, under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

Fifth Circuit Rule 19 is taken from preexisting local Rule 7; it is not inconsistent with the rules promulgated by the Judicial Conference of the United States and remains in force as a result of the reaffirmation by the Judicial Council on May 4, 2008, of the order delegating petitions for review to five-judge panels. See Rule 2(a).

The Fifth Circuit Comments and Procedures are adapted from the preexisting local rules not in conflict with the rules promulgated by the Judicial Conference of the United States. They are intended to provide additional information that may be useful to persons wishing to file complaints.

The former Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability will hereinafter be cited as follows: 5th Cir. R. ____.

Delegations of authority approved by the Judicial Council are also appended to the respective rules to which they pertain.

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RESEARCH REFERENCES

Practice References. The *Practitioner's Guide to the U.S. Court of Appeals for the Fifth Circuit* can be found on the "Clerk's Office" section of the Fifth Circuit Court of Appeals' website located at www.ca5.uscourts.gov/ClerkDocs.aspx. It is available in both a "pdf" and "html" format, and can be downloaded or printed from the Court's site.

Geyh, Alfini, Lubet, Shaman,, Judicial Conduct and Ethics, Fifth Edition (Michie).

Shepard's Professional and Judicial Conduct Citations (Shepard's).

ARTICLE I. GENERAL PROVISIONS

Rule 1. Scope and Covered Judges.

(a) *Scope.* These Rules govern proceedings under the Judicial Conduct and Disability Act (Act), 28 U.S.C. §§ 351-364, to determine whether a covered judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.

(b) *Covered Judge.* A covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.

Fifth Circuit Procedure 1

1. Judges subject to the procedure.

(a) The judicial misconduct and disability complaint procedure applies to judges of the United States courts of appeals, district and bankruptcy courts, and magistrate judges of the Fifth Circuit. The rules therefore apply to judges of the Court of Appeals for the Fifth Circuit, district, bankruptcy, and magistrate judges of federal courts within the states of Texas, Louisiana, and Mississippi. (Former 5th Cir. R. 1(C)(1))

(b) Complaints against other federal court officials within the Fifth Circuit should be made to their supervisors. If the complaints cannot be resolved satisfactorily at lower levels, they may be referred to the chief judge of the employing court whose decision will be final, subject to review only as the judicial council may prescribe. (Former 5th Cir. R. 1(C)(2))

Rule 2. Construction and Effect.

(a) *Generally.* These Rules are mandatory; they supersede any conflicting judicial-council rules. Judicial councils may promulgate additional rules to implement the Act as long as those rules do not conflict with these Rules.

(b) *Exception.* A Rule will not apply if, when performing duties authorized by the Act, a chief judge, a special committee, a judicial council, the Committee on Judicial Conduct and Disability, or the Judicial Conference expressly finds that exceptional circumstances render application of that Rule in a particular proceeding manifestly unjust or contrary to the purposes of the Act or these Rules.

Rule 3. General Definitions.

The following general definitions apply to these Rules. Cognizable misconduct and disability are defined in Rule 4.

(a) *Chief Judge.* "Chief judge" means the chief judge of a United States court of appeals, of the United States Court of International Trade, or of the United States Court of Federal Claims.

(b) *Circuit Clerk.* "Circuit clerk" means a clerk of a United States court of appeals, the clerk of the United States Court of International Trade, the clerk of the United States Court of Federal Claims, or the circuit executive of the United States Court of Appeals for the Federal Circuit.

(c) *Complaint.* A "complaint" is:

(1) a document that, in accordance with Rule 6, is filed by, or on behalf of, any person, including a document filed by an organization; or

(2) information from any source, other than a document described in (c)(1), that gives a chief judge probable cause to believe that a covered judge, as defined in Rule 1(b), has engaged in misconduct or may have a disability, whether or not the information is framed as or is intended to be an allegation of misconduct or disability.

(d) *Court of Appeals, District Court, and District Judge.* "Courts of appeals," "district court," and "district judge," where appropriate, include the United

States Court of Federal Claims, the United States Court of International Trade, and the judges thereof.

(e) *Judicial Council and Circuit.* "Judicial council" and "circuit," where appropriate, include any courts designated in 28 U.S.C. § 363.

(f) *Judicial Employee.* "Judicial Employee" includes judicial assistants, law clerks, and other court employees, including unpaid staff, such as interns, externs, and other volunteer employees.

(g) *Magistrate Judge.* "Magistrate judge," where appropriate, includes a special master appointed by the Court of Federal Claims under 42 U.S.C. § 300aa-12(c).

(h) *Subject Judge.* "Subject judge" means a covered judge, as described in Rule 1(b), who is the subject of a complaint.

ARTICLE II. MISCONDUCT AND DISABILITY

Rule 4. Misconduct and Disability Definitions.

(a) *Misconduct Generally.* Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts. Cognizable misconduct includes, but is not limited to, the following:

(1) Violation of Specific Standards of Judicial Conduct. Cognizable misconduct includes:

(A) using the judge's office to obtain special treatment for friends or relatives;

(B) accepting bribes, gifts, or other personal favors related to the judicial office;

(C) engaging in improper ex parte communications with parties or counsel for one side in a case;

(D) engaging in partisan political activity or making inappropriately partisan statements;

(E) soliciting funds for organizations; or

(F) violating rules or standards pertaining to restrictions on outside income or knowingly violating requirements for financial disclosure.

(2) Abusive or Harassing Behavior. Cognizable misconduct includes:

(A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault;

(B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or

(C) creating a hostile work environment for judicial employees.

(3) *Discrimination.* Cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability;

(4) *Retaliation.* Cognizable misconduct includes retaliating against complainants, witnesses, judicial employees, or others for participating in this complaint process, or for reporting or disclosing judicial misconduct or disability;

(5) *Interference or Failure to Comply with the Complaint Process.* Cognizable misconduct includes refusing, without good cause shown, to cooperate in the investigation of a complaint or enforcement of a decision rendered under these Rules; or

(6) *Failure to Report or Disclose.* Cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability.

A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the relevant chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge's assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary.

A person reporting information of misconduct or disability must be informed at the outset of a judge's responsibility to disclose such information to the relevant chief district judge or chief circuit judge.

Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.

(7) *Conduct Outside the Performance of Official Duties.* Cognizable misconduct includes conduct occurring outside the performance of official duties if the conduct is reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.

(b) *Conduct Not Constituting Cognizable Misconduct.*

(1) *Allegations Related to the Merits of a Decision or Procedural Ruling.* Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse.

If the decision or ruling is alleged to be the result of an improper motive, e.g., a bribe, ex parte contact, racial or ethnic bias, or improper conduct in rendering a decision or ruling, such as personally derogatory remarks irrelevant to the issues, the complaint is not cognizable to the extent that it calls into question the merits of the decision.

(2) *Allegations About Delay.* Cognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases.

(c) *Disability.* Disability is a temporary or permanent impairment, physical or mental, rendering a judge unable to discharge the duties of the particular judicial office. Examples of disability include substance abuse, the inability to stay awake during court proceedings, or impairment of cognitive abilities that renders the judge unable to function effectively.

Fifth Circuit Comment 4

4.1 Basis for Complaints. The law authorizes complaints against United States circuit, district, bankruptcy, and magistrate judges who have "engaged in conduct prejudicial to the effective and expeditious administration of business of the courts", or who are "unable to discharge all the duties of office by reason of mental or physical disability." The conduct to which the law is addressed does not include making wrong decisions-even very wrong decisions-for a complaint may be dismissed if it is "directly related to the merits of a decision or procedural ruling." Disagreements with a judge's rulings should be raised through the normal appellate review process because these judicial misconduct procedures are not a substitute for or supplement to a proper appeal under the Federal Rules of Appellate Procedure. "Mental or physical disability" may include temporary conditions as well as permanent disability. (Former 5th Cir. R. 1(B))

4.2 Limitations on use of the judicial misconduct procedures. The complaint procedures are not intended to provide a means of reviewing a judge's decision or ruling in a case. The judicial council of the circuit, the body which takes action under the complaint procedure, does not have the power to change a decision or ruling. Only a court can do that. More specifically, the complaint procedures may not be ordinarily used to:

1. Have a judge disqualified or recused from a case;
2. Transfer a pending case from one judge or court to another;
3. Compel a judge to make a ruling on a particular motion in a case;
4. Have money damages awarded;
5. Obtain release from custody.

(Former 5th Cir. R. 1(E)

ARTICLE III. INITIATION OF COMPLAINT

Rule 5. Identification of Complaint.

(a) *Identification.* When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed. A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory. If no informal resolution is achieved or is feasible, the chief judge may identify a complaint and, by written order stating the reasons, begin the review provided in Rule 11. If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the chief judge must identify a complaint. A chief judge must not decline to identify a complaint merely because the person making the allegation has not filed a complaint under Rule 6. This Rule is subject to Rule 7.

(b) *Submission Not Fully Complying with Rule 6.* A legible submission in substantial but not full compliance with Rule 6 must be considered as possible grounds for the identification of a complaint under Rule 5(a).

Rule 6. Filing of Complaint.

(a) *Form.* A complainant may use the form reproduced in the Appendix to these Rules or a form designated by the rules of the judicial council in the circuit in which the complaint is filed. A complaint form is also available on each court of appeals' website or may be obtained from the circuit clerk or any district court or bankruptcy court within the circuit. A form is not necessary to file a complaint, but the complaint must be written and must include the information described in (b).

(b) *Brief statement of facts.* A complaint must contain a concise statement that details the specific facts on which the claim of misconduct or disability is based. The statement of facts should include a description of:

(1) what happened;

(2) when and where the relevant events happened;

(3) any information that would help an investigator check the facts; and

(4) for an allegation of disability, any additional facts that form the basis of that allegation.

(c) *Legibility.* A complaint should be typewritten if possible. If not typewritten, it must be legible. An illegible complaint will be returned to the complainant with a request to resubmit it in legible form. If a resubmitted complaint is still illegible, it will not be accepted for filing.

(d) *Complainant's Address and Signature; Verification.* The complainant must provide a contact address and sign the complaint. The truth of the statements made in the complaint must be verified in writing under penalty of perjury. If any of these requirements are not met, the submission will be accepted, but it will be reviewed under only Rule 5(b).

(e) *Number of Copies; Envelope Marking.* The complainant shall provide the number of copies of the complaint required by local rule. Each copy should be in an envelope marked "Complaint of Misconduct" or "Complaint of Disability." The envelope must not show the name of any subject judge.

Fifth Circuit Procedure 6

6. Filing of Complaint.

(a) *Adoption/incorporation of complaint or other document.* All allegations must be set forth in the concise statement of facts. Allegations made in exhibits or attachments will not be considered. A complaint that simply states that it adopts, or incorporates the facts or statements of, another complaint, pleading, brief, or other document does not meet the requirements of Rule 6 and will not be accepted for filing.

(b) *Clarity of allegations.* The allegations in the statement of facts must be readily intelligible. The Clerk will return complaints in which the allegations are unintelligible.

(c) *Legal argument.* To the extent that a complainant wishes to incorporate any legal argument in the statement of facts, the submission cannot exceed the five-page limit for the statement of facts.

(d) *Page limit.* The statement of facts should be limited to five single-sided and double-spaced pages on 8.5x11 inch paper, whether typed or handwritten. Font size must be at least 12pt. If a complainant believes that more than five pages are necessary for a "concise statement" of facts, the complainant may submit a proposed statement of facts to the Clerk, who will determine whether the over-length complaint will be accepted for filing as submitted. If the Clerk determines that the complaint should not be filed as submitted, the complainant will be given an opportunity to reduce the statement of facts to five pages.

(e) *Signature.* The complaint must be signed with a "wet" or "blue" signature. If there are multiple complainants, each complainant must sign the complaint.

(f) *Exhibits.* Allegations made in exhibits or attachments to the complaint will not be considered. Documents referred to in the statement of facts may be filed with the complaint. Only documentation that is required to support the specific facts alleged should be submitted — excess or irrelevant documentation will be returned to the complainant only if the complainant provides a self-addressed envelope bearing sufficient postage.

(g) *Supplements.* Once a complaint is filed, it may not be supplemented by additional statements or documents except to correct inaccuracies in the original complaint. Supplements submitted after the complaint is filed will be returned to the complainant if they do not comply with this section.

(h) *Number of copies.* Only an original of the complaint should be filed. (Former 5th Cir. R 2(E)).

Fifth Circuit Comment 6

6.1 Complainant's Address and Signature; Verification. If any of the requirements of Rule 6(d) are not met and the complaint is reviewed under Rule 5(b), the complainant will not be entitled to notice of any decision of the Chief Judge.

Rule 7. Where to Initiate Complaint.

(a) *Where to File.* Except as provided in (b),

(1) a complaint against a judge of a United States court of appeals, a United States district court, a United States bankruptcy court, or a United States magistrate judge must be filed with the circuit clerk in the jurisdiction in which the subject judge holds office.

(2) a complaint against a judge of the United States Court of International Trade or the United States Court of Federal Claims must be filed with the respective clerk of that court.

(3) a complaint against a judge of the United States Court of Appeals for the Federal Circuit must be filed with the circuit executive of that court.

(b) *Misconduct in Another Circuit; Transfer.* If a complaint alleges misconduct in the course of official business while the subject judge was sitting on a court by designation under 28 U.S.C. §§ 291-293 and 294(d), the complaint may be filed or identified with the circuit clerk of that circuit or of the subject judge's home circuit. The proceeding will continue in the circuit of the first-filed or first-identified complaint. The judicial council of the circuit where the complaint was first filed or first identified may transfer the complaint to the subject judge's home circuit or to the circuit where the alleged misconduct occurred, as the case may be.

Fifth Circuit Procedure 7

7. *Where to file.* Complaints should be sent to the Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The envelope should be marked "Complaint of Misconduct" or "Complaint of Disability." The name of the judge complained about should not appear on the envelope. (Former 5th Cir.R. 2(H)).

Rule 8. Action by Circuit Clerk.

(a) *Receipt of Complaint.* Upon receiving a complaint against a judge filed under Rule 6 or identified under Rule 5, the circuit clerk must open a file, assign a docket number according to a uniform numbering scheme promulgated by the Committee on Judicial Conduct and Disability, and acknowledge the complaint's receipt.

(b) *Distribution of Copies.* The circuit clerk must promptly send copies of a complaint filed under Rule 6 to the chief judge or, where the chief judge is disqualified from considering a complaint, to the judge authorized to act as chief judge under Rule 25(f), and copies of complaints filed under Rule 6 or identified under Rule 5 to each subject judge. The circuit clerk must retain the original complaint. Any further distribution should be as provided by local rule.

(c) *Complaint Against Noncovered Person.* If the circuit clerk receives a complaint about a person not holding an office described in Rule 1(b), the clerk must not accept the complaint under these Rules.

(d) *Complaint Against Judge and Another Noncovered Person.* If the circuit clerk receives a complaint about a judge described in Rule 1(b) and a person not holding an office described in Rule 1(b), the clerk must accept the complaint under these Rules only with regard to the judge and must so inform the complainant.

FIFTH CIRCUIT PROCEDURE 8

8. *Action by Circuit Clerk*

(a) *Abatement.* If a complaint raises issues which are also raised in pending litigation, the circuit clerk will advise the complainant that the complaint shall be (or is being) held in abeyance pending disposition of the litigation, including appeals, and that the complainant must advise the clerk in writing of the disposition of the litigation.

(b) *Distribution of copies.* The Clerk may send copies of complaints to subject judges via email.

Rule 9. Time for Filing or Identifying Complaint.

A complaint may be filed or identified at any time. If the passage of time has made an accurate and fair investigation of a complaint impracticable, the complaint must be dismissed under Rule 11(c)(1)(E).

Rule 10. Abuse of Complaint Procedure.

(a) *Abusive Complaints.* A complainant who has filed repetitive, harassing, or frivolous complaints, or has otherwise abused the complaint procedure, may be restricted from filing further complaints. After giving the complainant an opportunity to show cause in writing why his or her right to file further complaints should not be limited, the judicial council may prohibit, restrict, or impose conditions on the complainant's use of the complaint procedure. Upon written request of the complainant, the judicial council may revise or withdraw any prohibition, restriction, or condition previously imposed.

(b) *Orchestrated Complaints.* When many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order instructing the circuit clerk to accept only a certain number of such complaints for filing and to refuse to accept additional complaints. The circuit clerk must send a copy of any such order to anyone whose complaint was not accepted.

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

In Re: Delegation to Chief Circuit Judge, or acting Judge Pursuant to rule 25(f) of the Rules For Judicial-Conduct and Judicial-Disability Proceedings

Before: JONES, Chief Judge, and Judges SMITH, KING, DAVIS, BARKSDALE, DENNIS, CLEMENT, OWEN, ELROD, SOUTHWICK, VANCE, BRADY, MELANCON, BIGGERS, GUIROLA, CUMMINGS, HEAD, HEARTFIELD, and BIERY.

DELEGATION

In order to effectuate Rule 10(a) of the Rules for Judicial-Conduct and Judicial Disability Proceedings (made effective April 10, 2008), the Judicial Council hereby delegates the following authority to the chief circuit judge or judge acting for the chief judge pursuant to rule 25(f)

When a complainant has filed repetitive, harassing or frivolous complaints, or has otherwise abused the complaint procedure, the order dismissing the complaint under Rule 11 (c) may include a provision suspending the right of the complainant to file further complaints without written permission from the chief judge or judge acting for him or her.

A complainant upon whom such a suspension is imposed may show cause, through a petition for review submitted pursuant to Rule 18, why his or her right to file further complaints should not be so limited. If, under Rule 19 (b)

(1), the order of the chief judge is affirmed, the suspension shall become a permanent restriction prohibiting the filing of complaints, subject to its own terms and to the power of the Judicial Council under Rule 10(a) to revise or withdraw any prohibition, restriction or condition previously imposed.

FOR THE COUNCIL:
May 4, 2008 /s/Edith H. Jones

ARTICLE IV. REVIEW OF COMPLAINT BY CHIEF JUDGE

Rule 11. Chief Judge's Review.

(a) *Purpose of Chief Judge's Review.* When a complaint is identified by the chief judge or is filed, the chief judge must review it unless the chief judge is disqualified under Rule 25, in which case the most-senior active circuit judge not disqualified will review the complaint. If a complaint contains information constituting evidence of misconduct or disability, but the complainant does not claim it as such, the chief judge must treat the complaint as if it did allege misconduct or disability and give notice to the subject judge. After reviewing a complaint, the chief judge must determine whether it should be:

(1) dismissed;

(2) concluded on the ground that voluntary corrective action has been taken;

(3) concluded because intervening events have made action on the complaint no longer necessary; or

(4) referred to a special committee.

(b) *Chief Judge's Inquiry.* In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry. The chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter, and may obtain and review transcripts and other relevant documents. In conducting the inquiry, the chief judge must not determine any reasonably disputed issue. Any such determination must be left to a special committee appointed under Rule 11(f) and to the judicial council that considers the committee's report.

(c) *Dismissal.*

(1) *Permissible grounds.* A complaint must be dismissed in whole or in part to the extent that the chief judge concludes that the complaint:

(A) alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in the inability to discharge the duties of judicial office;

(B) is directly related to the merits of a decision or procedural ruling;

(C) is frivolous;

(D) is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists;

(E) is based on allegations which are incapable of being established through investigation;

(F) has been filed in the wrong circuit under Rule 7; or

(G) is otherwise not appropriate for consideration under the Act.

(2) *Impermissible grounds.* A complaint must not be dismissed solely because it repeats allegations of a previously dismissed complaint if it also contains material information not previously considered and does not constitute harassment of the subject judge.

(d) *Corrective Action.* The chief judge may conclude the complaint proceeding in whole or in part if:

(1) an informal resolution under Rule 5 satisfactory to the chief judge was reached before the complaint was filed under Rule 6, or

(2) the chief judge determines that the subject judge has taken appropriate voluntary corrective action that acknowledges and remedies the problems raised by the complaint.

(e) *Intervening Events.* The chief judge may conclude a complaint proceeding in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge.

(f) *Appointment of Special Committee.* If some or all of a complaint is not dismissed or concluded, the chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council. Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing if the judge was not given an opportunity during the limited inquiry. In the chief judge's discretion, separate complaints may be joined and assigned to a single special committee. Similarly, a single complaint about more than one judge may be severed and more than one special committee appointed.

(g) *Notice of Chief Judge's Action; Petitions for Review.*

(1) When chief judge appoints special committee. If the chief judge appoints a special committee, the chief judge must notify the complainant and the subject judge that the matter has been referred to a committee, notify the complainant of a complainant's rights under Rule 16, and identify the members of the committee. A copy of the order appointing the special committee must be sent to the Committee on Judicial Conduct and Disability.

(2) When chief judge disposes of complaint without appointing special committee. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the chief judge must prepare a supporting memorandum that sets forth the reasons for the disposition. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. Except as authorized by 28 U.S.C. § 360, the memorandum must not include the name of the complainant or of the subject judge. The order and memoranda incorporated by reference in the order must be promptly sent to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.

(3) Right to petition for review. If the chief judge disposes of a complaint under Rule 11(c), (d), or (e), the complainant and the subject judge must be notified of the right to petition the judicial council for review of the disposition,

as provided in Rule 18. If the chief judge so disposes of a complaint that was identified under Rule 5 or filed by its subject judge, the chief judge must transmit the order and memoranda incorporated by reference in the order to the judicial council for review in accordance with Rule 19. In the event of such a transmission, the subject judge may make a written submission to the judicial council but will have no further right of review except as allowed under Rule 21(b)(1)(B). When a disposition is to be reviewed by the judicial council, the chief judge must promptly transmit all materials obtained in connection with the inquiry under Rule 11(b) to the circuit clerk for transmittal to the council.

(h) *Public Availability of Chief Judge's Decision.* The chief judge's decision must be made public to the extent, at the time, and in the manner provided in Rule 24.

Fifth Circuit Procedure 11

11. Notice of Chief Judge's Action; Petition for Review. The Clerk may send all communications to the subject judge required by this Rule via email.

ARTICLE V. INVESTIGATION AND REPORT BY SPECIAL COMMITTEE

Rule 12. Special Committee's Composition.

(a) *Membership.* Except as provided in (e), a special committee appointed under Rule 11(f) must consist of the chief judge and equal numbers of circuit and district judges. These judges may include senior judges. If a complaint is about a district judge, bankruptcy judge, or magistrate judge, then, when possible, the district-judge members of the special committee must be from districts other than the district of the subject judge. For the courts named in 28 U.S.C. § 363, the special committee must be selected from the judges serving on the subject judge's court.

(b) *Presiding Officer.* When appointing the special committee, the chief judge may serve as the presiding officer or else must designate a committee member as the presiding officer.

(c) *Bankruptcy Judge or Magistrate Judge as Adviser.* If the subject judge is a bankruptcy judge or magistrate judge, he or she may, within 14 days after being notified of the special committee's appointment, ask the chief judge to designate as a committee adviser another bankruptcy judge or magistrate judge, as the case may be. The chief judge must grant such a request but may otherwise use discretion in naming the adviser. Unless the adviser is a Court of Federal Claims special master appointed under 42 U.S.C. § 300aa 12(c), the adviser must be from a district other than the district of the subject bankruptcy judge or subject magistrate judge. The adviser cannot vote but has the other privileges of a special-committee member.

(d) *Provision of Documents.* The chief judge must certify to each other member of the special committee and to any adviser copies of the complaint and statement of facts, in whole or relevant part, and any other relevant documents on file.

(e) *Continuing Qualification of Special-Committee Member.* A member of a special committee may continue to serve on the committee even though the member relinquishes the position of chief judge, active circuit judge, or active district judge, as the case may be, but only if the member continues to hold office under Article III, Section 1, of the Constitution of the United States, or under 28 U.S.C. § 171.

(f) *Inability of Special-Committee Member to Complete Service.* If a member of a special committee can no longer serve because of death, disability, disqualification, resignation, retirement from office, or other reason, the chief judge must decide whether to appoint a replacement member, either a circuit or district judge as needed under (a). No special committee appointed under these Rules may function with only a single member, and the votes of a two-member committee must be unanimous.

(g) *Voting.* All actions by a special committee must be by vote of a majority of all members of the committee.

Rule 13. Conduct of Special-Committee Investigation.

(a) *Extent and Methods of Special-Committee Investigation.* A special committee should determine the appropriate extent and methods of its investigation in light of the allegations in the complaint and the committee's preliminary inquiry. In investigating the alleged misconduct or disability, the special committee should take steps to determine the full scope of the potential misconduct or disability, including whether a pattern of misconduct or a broader disability exists. The investigation may include use of appropriate experts or other professionals. If, in the course of the investigation, the special committee has cause to believe that the subject judge may have engaged in misconduct or has a disability that is beyond the specific pending complaint, the committee must refer the new matter to the chief judge for a determination of whether action under Rule 5 or Rule 11 is necessary before the committee's investigation is expanded to include the new matter.

(b) *Criminal Conduct.* If the special committee's investigation concerns conduct that may be a crime, the committee must consult with the appropriate prosecutorial authorities to the extent permitted by the Act to avoid compromising any criminal investigation. The special committee has final authority over the timing and extent of its investigation and the formulation of its recommendations.

(c) *Staff.* The special committee may arrange for staff assistance to conduct the investigation. It may use existing staff of the judiciary or may hire special staff through the Director of the Administrative Office of the United States Courts.

(d) *Delegation of Subpoena Power; Contempt.* The chief judge may delegate the authority to exercise the subpoena powers of the special committee. The judicial council or special committee may institute a contempt proceeding under 28 U.S.C. § 332(d) against anyone who fails to comply with a subpoena.

Rule 14. Conduct of Special-Committee Hearings.

(a) *Purpose of Hearings.* The special committee may hold hearings to take testimony and receive other evidence, to hear argument, or both. If the special committee is investigating allegations against more than one judge, it may hold joint or separate hearings.

(b) *Special-Committee Evidence.* Subject to Rule 15, the special committee must obtain material, nonredundant evidence in the form it considers appropriate. In the special committee's discretion, evidence may be obtained by committee members, staff, or both. Witnesses offering testimonial evidence may include the complainant and the subject judge.

(c) *Counsel for Witnesses.* The subject judge has the right to counsel. The special committee has discretion to decide whether other witnesses may have counsel present when they testify.

(d) *Witness Fees.* Witness fees must be paid as provided in 28 U.S.C. § 1821.

(e) *Oath.* All testimony taken at a hearing must be given under oath or affirmation.

(f) *Rules of Evidence.* The Federal Rules of Evidence do not apply to special-committee hearings.

(g) *Record and Transcript.* A record and transcript must be made of all hearings.

Rule 15. Subject Judge's Rights.

(a) *Notice.*

(1) *Generally.* The subject judge must receive written notice of:

(A) the appointment of a special committee under Rule 11(f);

(B) the expansion of the scope of an investigation under Rule 13(a);

(C) any hearing under Rule 14, including its purposes, the names of any witnesses the special committee intends to call, and the text of any statements that have been taken from those witnesses.

(2) *Suggestion of additional witnesses.* The subject judge may suggest additional witnesses to the committee.

(b) *Special-Committee Report.* The subject judge must be sent a copy of the special committee's report when it is filed with the judicial council.

(c) *Presentation of Evidence.* At any hearing held under Rule 14, the subject judge has the right to present evidence, to compel the attendance of witnesses, and to compel the production of documents. At the request of the subject judge, the chief judge or the judge's designee must direct the circuit clerk to issue a subpoena to a witness under 28 U.S.C. § 332(d)(1). The subject judge must be given the opportunity to cross-examine special committee witnesses, in person or by counsel.

(d) *Presentation of Argument.* The subject judge may submit written argument to the special committee and must be given a reasonable opportunity to present oral argument at an appropriate stage of the investigation.

(e) *Attendance at Hearings.* The subject judge has the right to attend any hearing held under Rule 14 and to receive copies of the transcript, of any documents introduced, and of any written arguments submitted by the complainant to the special committee.

(f) *Representation by Counsel.* The subject judge may choose to be represented by counsel in the exercise of any right enumerated in this Rule. As provided in Rule 20(e), the United States may bear the costs of the representation.

Fifth Circuit Procedure 15

15. Notice; Special-Committee Report. The Clerk may send all written notice to the subject judge required by this Rule, and the Special-Committee Report, via email.

Rule 16. Complainant's Rights in Investigation.

(a) *Notice.* The complainant must receive written notice of the investigation as provided in Rule 11(g)(1). When the special committee's report to the judicial council is filed, the complainant must be notified of the filing. The judicial council may, in its discretion, provide a copy of the report of a special committee to the complainant.

(b) *Opportunity to Provide Evidence.* If the complainant knows of relevant evidence not already before the special committee, the complainant may briefly explain in writing the basis of that knowledge and the nature of that evidence. If the special committee determines that the complainant has information not already known to the committee that would assist in the committee's investigation, a representative of the committee must interview the complainant.

(c) *Presentation of Argument.* The complainant may submit written argument to the special committee. In its discretion, the special committee may permit the complainant to offer oral argument.

(d) *Representation by Counsel.* A complainant may submit written argument through counsel and, if permitted to offer oral argument, may do so through counsel.

Rule 17. Special-Committee Report.

The special committee must file with the judicial council a comprehensive report of its investigation, including findings and recommendations for council action. The report must be accompanied by a statement of the vote by which it was adopted, any separate or dissenting statements of special-committee members, and the record of any hearings held under Rule 14. In addition to being sent to the subject judge under Rule 15(b), a copy of the report and any accompanying statements and documents must be sent to the Committee on Judicial Conduct and Disability.

ARTICLE VI. REVIEW BY JUDICIAL COUNCIL

Rule 18. Petition for Review of Chief-Judge Dispositions Under Rule 11(c), (d), or (e).

(a) *Petitions for Review.* After the chief judge issues an order under Rule 11(c), (d), or (e), the complainant or the subject judge may petition the judicial council of the circuit to review the order. By rules promulgated under 28 U.S.C. § 358, the judicial council may refer a petition for review filed under this Rule to a panel of no fewer than five members of the council, at least two of whom must be district judges.

(b) *When to File; Form; Where to File.* A petition for review must be filed in the office of the circuit clerk within 42 days after the date of the chief judge's order. The petition for review should be in letter form, addressed to the circuit clerk, and in an envelope marked "Misconduct Petition" or "Disability Petition." The name of the subject judge must not be shown on the envelope. The petition for review should be typewritten or otherwise legible. It should begin with "I hereby petition the judicial council for review of . . ." and state the reasons why the petition should be granted. It must be signed.

(c) *Receipt and Distribution of Petition.* A circuit clerk who receives a petition for review filed in accordance with this Rule must:

(1) acknowledge its receipt and send a copy to the complainant or subject judge, as the case may be;

(2) promptly distribute to each member of the judicial council, or its relevant panel, except for any member disqualified under Rule 25, or make available in the manner provided by local rule, the following materials:

(A) copies of the complaint;
(B) all materials obtained by the chief judge in connection with the inquiry;
(C) the chief judge's order disposing of the complaint;
(D) any memorandum in support of the chief judge's order;
(E) the petition for review; and
(F) an appropriate ballot;

(3) send the petition for review to the Judicial Conference Committee on Judicial Conduct and Disability. Unless the Committee on Judicial Conduct and Disability requests them, the circuit clerk will not send copies of the materials obtained by the chief judge.

(d) *Untimely Petition.* The circuit clerk must refuse to accept a petition that is received after the time allowed in (b).

(e) *Timely Petition Not in Proper Form.* When the circuit clerk receives a petition for review filed within the time allowed but in a form that is improper to a degree that would substantially impair its consideration by the judicial council — such as a document that is ambiguous about whether it is intended to be a petition for review — the circuit clerk must acknowledge its receipt, call the filer's attention to the deficiencies, and give the filer the opportunity to correct the deficiencies within the original time allowed for filing the petition or within 21 days after the date on which a notice of the deficiencies was sent to the complainant, whichever is later. If the deficiencies are corrected within the time allowed, the circuit clerk will proceed according to paragraphs (a) and (c) of this Rule. If the deficiencies are not corrected, the circuit clerk must reject the petition.

Fifth Circuit Procedure 18

18. Petitions for Review.

(a) Substance. Petitions may but need not include supporting argument. Review by the Judicial Council is limited to facts set forth in the complaint, and supplemental allegations and information will not be considered.

(b) Page Limit. Petitions should not exceed five single-sided and double-spaced pages on 8.5x11 inch paper, whether typed or handwritten, and should not include attachments. Font size must be at least 12pt.

(c) Supplements. Once a petition is filed, it may not be supplemented by additional statements or documents except to correct inaccuracies in the original petition. Supplements submitted after the petition is filed will be returned to the complainant if they do not comply with this section.

(d) Extensions. Extensions to the time to file a petition for review will be considered only in the most compelling circumstances.

(e) Where to file. Petitions should be sent to the Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The envelope should be marked "Misconduct Petition" or "Disability Petition." The name of the judge complained about should not appear on the envelope. (Former 5th Cir. R. 5 (H))

(f) Receipt and Distribution of Petition. The Clerk may send a petition for review filed by the complainant to the subject judge via email, and may send the materials required by Rule 18(c)(2) to the judicial council or its relevant panel via email.

Rule 19. Judicial-Council Disposition of Petition for Review.

(a) *Rights of Subject Judge.* At any time after a complainant files a petition for review, the subject judge may file a written response with the circuit clerk. The circuit clerk must promptly distribute copies of the response to each member of the judicial council or of the relevant panel, unless that member is disqualified under Rule 25. Copies must also be distributed to the chief judge, to the complainant, and to the Committee on Judicial Conduct and Disability. The subject judge must not otherwise communicate with individual judicial-council members about the matter. The subject judge must be given copies of any communications to the judicial council from the complainant.

(b) *Judicial-Council Action.* After considering a petition for review and the materials before it, the judicial council may:

(1) affirm the chief judge's disposition by denying the petition;

(2) return the matter to the chief judge with directions to conduct a further inquiry under Rule 11(b) or to identify a complaint under Rule 5;

(3) return the matter to the chief judge with directions to appoint a special committee under Rule 11(f); or

(4) in exceptional circumstances, take other appropriate action.

(c) *Notice of Judicial-Council Decision.* Copies of the judicial council's order, together with memoranda incorporated by reference in the order and separate concurring or dissenting statements, must be given to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability.

(d) *Memorandum of Judicial-Council Decision.* If the judicial council's order affirms the chief judge's disposition, a supporting memorandum must be prepared only if the council concludes that there is a need to supplement the chief judge's explanation. A memorandum supporting a judicial-council order must not include the name of the complainant or the subject judge.

(e) *Review of Judicial-Council Decision.* If the judicial council's decision is adverse to the petitioner, and if no member of the council dissented, the complainant must be notified that he or she has no right to seek review of the decision. If there was a dissent, the petitioner must be informed that he or she can file a petition for review under Rule 21(b).

(f) *Public Availability of Judicial-Council Decision.* Materials related to the judicial council's decision must be made public to the extent, at the time, and in the manner set forth in Rule 24.

Fifth Circuit Procedure 19

19. *Judicial-Council Disposition of Petition for Review.* The Clerk may send all communications to the subject judge, to the judicial council or its panel, and to the chief judge required by this Rule via email.

Fifth Circuit Rule 19

19. *Review by the judicial council.*The judicial council may, consistent with 28 U. S. C. § 352 (d), delegate the review process to rotating panels drawn at random with power to act on behalf of the full council. (Former 5th Cir. R. 7)

Order of the Judicial Council effectuating rule 19:

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

In Re: ASSIGNMENT OF APPELLATE REVIEW PANELS
(As Revised and Readopted)
Before: STEWART, Chief Judge; OWEN, JOLLY, DENNIS, ELROD, SOUTHWICK, GRAVES, HIGGINSON, COSTA, LEMELLE, DICK, HICKS, BROWN, OZERDEN, GODBEY, ROSENTHAL, CLARK, AND MARTINEZ.
RESOLUTION

BE IT RESOLVED that Judicial Council review of orders of the chief judge of the circuit dismissing 28 U.S.C. 351 et seq. shall be processed as follows:

The members of the Judicial Council, excluding the chief judge of the circuit and the circuit judge next senior in service, shall be assigned by random *selection to three panels, each composed of five judges, at least two of whom shall be district judges. The two remaining members will function as backup in the event of absence or recusal of any panel member.*

The panels shall be known as Appellate Review Panels and shall be separately identified. Panel assignments will be made annually, effective January 1 of each year.

Each panel shall perform the review functions for four consecutive calendar months, and may do so by communicating in person, by telephone, and/r by electronic and postal mail.

Panels are empowered to act on behalf of and in the name of the Judicial Council to affirm an appealed order, or to return the matter to the chief judge for further inquiry pursuant to Rule 19(b)(2), provided at least four members agree to such disposition and no panelist suggests full Council review. All other matters are to be referred to the full Council for disposition, together with any recommendation(s) the panel may deem appropriate.

For the Council
Date: May 8, 2017 */s/ Carl E. Stewart*

Rule 20. Judicial-Council Action Following Appointment of Special Committee.

(a) *Subject Judge's Rights.* Within 21 days after the filing of the report of a special committee, the subject judge may send a written response to the members of the judicial council. The subject judge must also be given an opportunity to present argument, personally or through counsel, written or oral, as determined by the judicial council. The subject judge must not otherwise communicate with judicial council members about the matter.

(b) *Judicial-Council Action.*

(1) *Discretionary actions.* Subject to the subject judge's rights set forth in subsection (a), the judicial council may:

(A) dismiss the complaint because:

(i) even if the claim is true, the claimed conduct is not conduct prejudicial to the effective and expeditious administration of the business of the courts and does not indicate a mental or physical disability resulting in inability to discharge the duties of office;

(ii) the complaint is directly related to the merits of a decision or procedural ruling;

(iii) the facts on which the complaint is based have not been established; or

(iv) the complaint is otherwise not appropriate for consideration under 28 U.S.C. §§ 351-364.

(B) conclude the proceeding because appropriate corrective action has been taken or intervening events have made the proceeding unnecessary.

(C) refer the complaint to the Judicial Conference with the judicial council's recommendations for action.

(D) take remedial action to ensure the effective and expeditious administration of the business of the courts, including:

(i) censuring or reprimanding the subject judge, either by private communication or by public announcement;

(ii) ordering that no new cases be assigned to the subject judge for a limited, fixed period;

(iii) in the case of a magistrate judge, ordering the chief judge of the district court to take action specified by the council, including the initiation of removal proceedings under 28 U.S.C. § 631(i) or 42 U.S.C. § 300aa-12(c)(2);

(iv) in the case of a bankruptcy judge, removing the judge from office under 28 U.S.C. § 152(e);

(v) in the case of a circuit or district judge, requesting the judge to retire voluntarily with the provision (if necessary) that ordinary length of service requirements be waived;

(vi) in the case of a circuit or district judge who is eligible to retire but does not do so, certifying the disability of the judge under 28 U.S.C. § 372(b) so that an additional judge may be appointed; and

(vii) in the case of a circuit chief judge or district chief judge, finding that the judge is temporarily unable to perform chief-judge duties, with the result that those duties devolve to the next eligible judge in accordance with 28 U.S.C. § 45(d) or § 136(e).

(E) take any combination of actions described in (b)(1)(A) — (D) of this Rule that is within its power.

(2) *Mandatory actions.* A judicial council must refer a complaint to the Judicial Conference if the council determines that a circuit judge or district judge may have engaged in conduct that:

(A) might constitute ground for impeachment; or

(B) in the interest of justice, is not amenable to resolution by the judicial council.

(c) *Inadequate Basis for Decision.* If the judicial council finds that a special committee's report, recommendations, and record provide an inadequate basis for decision, it may return the matter to the committee for further investigation and a new report, or it may conduct further investigation. If the judicial council decides to conduct further investigation, the subject judge must be given adequate prior notice in writing of that decision and of the general scope and purpose of the additional investigation. The judicial council's conduct of the additional investigation must generally accord with the procedures and powers set forth in Rules 13 through 16 for the conduct of an investigation by a special committee.

(d) *Judicial-Council Vote.* Judicial-council action must be taken by a majority of those members of the council who are not disqualified. A decision to remove a bankruptcy judge from office requires a majority vote of all the members of the judicial council.

(e) *Recommendation for Fee Reimbursement.* If the complaint has been finally dismissed or concluded under (b)(1)(A) or (B) of this Rule, and if the subject judge so requests, the judicial council may recommend that the Director of the Administrative Office use funds appropriated to the judiciary to reimburse the judge for reasonable expenses incurred during the investigation, when those expenses would not have been incurred but for the requirements of the Act and these Rules. Reasonable expenses include attorneys' fees and expenses related to a successful defense or prosecution of a proceeding under Rule 21(a) or (b).

(f) *Judicial-Council Order.* Judicial-council action must be by written order. Unless the judicial council finds that extraordinary reasons would make it contrary to the interests of justice, the order must be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action. Such a memorandum may incorporate all or part of any underlying special-committee report. If the complaint was initiated by identification under Rule 5, the memorandum must so indicate. The order and memoranda incorporated by reference in the order must be provided to the complainant, the subject judge, and the Committee on Judicial Conduct and Disability. The complainant and the subject judge must be notified of any right to review of the judicial council's decision as provided in Rule 21(b). If the complaint was identified under Rule 5 or filed by its subject judge, the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21. In the event of such a transmission, the subject judge may make a written submission to the Committee on Judicial Conduct and Disability but will have no further right of review.

Fifth Circuit Procedure 20

20. Judicial-Council Action Following Appointment of Special Committee. The Clerk may send all communications to the subject judge, to the judicial council or its panel, to the special committee, and to the chief judge required by this Rule via email.

ARTICLE VII. REVIEW BY COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY

Rule 21. Committee on Judicial Conduct and Disability.

(a) *Committee Review.* The Committee on Judicial Conduct and Disability, consisting of seven members, considers and disposes of all petitions for review under (b) of this Rule, in conformity with the Committee's jurisdictional statement. Its review of judicial-council orders is for errors of law, clear errors of fact, or abuse of discretion. Its disposition of petitions for review is ordinarily final. The Judicial Conference may, in its sole discretion, review any such Committee decision, but a complainant or subject judge does not have a right to this review.

(b) *Reviewable Matters.*

(1) *Upon petition.* A complainant or subject judge may petition the Committee for review of a judicial-council order entered in accordance with:

(A) Rule 20(b)(1)(A), (B), (D), or (E); or

(B) Rule 19(b)(1) or (4) if one or more members of the judicial council dissented from the order.

(2) *Upon Committee's initiative.* At its initiative and in its sole discretion, the Committee may review any judicial-council order entered under Rule 19(b)(1) or (4), but only to determine whether a special committee should be appointed. Before undertaking the review, the Committee must invite that judicial council to explain why it believes the appointment of a special committee is unnecessary, unless the reasons are clearly stated in the council's order denying the petition for review. If the Committee believes that it would benefit from a submission by the subject judge, it may issue an appropriate request. If the Committee determines that a special committee should be appointed, the Committee must issue a written decision giving its reasons.

(c) *Committee Vote.* Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review related to that subject judge. Committee decisions under (b) of this Rule must be by majority vote of the qualified Committee members. Those members hearing the petition for review should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended. If only six members are qualified to consider a petition for review, the Chief Justice shall select an additional judge to join the qualified members to consider the petition. If four or fewer members are qualified to consider a petition for review, the Chief Justice shall select a panel of five judges, including the qualified Committee members, to consider it.

(d) *Additional Investigation.* Except in extraordinary circumstances, the Committee will not conduct an additional investigation. The Committee may return the matter to the judicial council with directions to undertake an additional investigation. If the Committee conducts an additional investigation, it will exercise the powers of the Judicial Conference under 28 U.S.C. § 331.

(e) *Oral Argument; Personal Appearance.* There is ordinarily no oral argument or personal appearance before the Committee. In its discretion, the Committee may permit written submissions.

(f) *Committee Decision.* A Committee decision under this Rule must be transmitted promptly to the Judicial Conference. Other distribution will be by the Administrative Office at the direction of the Committee chair.

(g) *Finality.* All orders of the Judicial Conference or of the Committee (when the Conference does not exercise its power of review) are final.

Rule 22. Procedures for Review.

(a) *Filing Petition for Review.* A petition for review of a judicial-council decision on a reviewable matter, as defined in Rule 21(b)(1), may be filed by sending a brief written statement to the Committee on Judicial Conduct and Disability at JCD_PetitionforReview@ao.uscourts.gov or to:

Judicial Conference Committee on Judicial Conduct and Disability
Attn: Office of General Counsel

Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

The Administrative Office will send a copy of the petition for review to the complainant or the subject judge, as the case may be.

(b) *Form and Contents of Petition.* No particular form is required. The petition must contain a short statement of the basic facts underlying the complaint, the history of its consideration before the appropriate judicial council, a copy of the judicial council's decision, and the grounds on which the petitioner seeks review. The petition for review must specify the date and docket number of the judicial-council order for which review is sought. The petitioner may attach any documents or correspondence arising in the course of the proceeding before the judicial council or its special committee. A petition should not normally exceed 20 pages plus necessary attachments. A petition for review must be signed by the petitioner or his or her attorney.

(c) *Time.* A petition for review must be submitted within 42 days after the date of the order for which review is sought.

(d) *Action on Receipt of Petition.* When a petition for review of a judicial-council decision on a reviewable matter, as defined in Rule 21(b)(1), is submitted in accordance with this Rule, the Administrative Office shall acknowledge its receipt, notify the chair of the Committee on Judicial Conduct and Disability, and distribute the petition to the members of the Committee for their deliberation.

ARTICLE VIII. MISCELLANEOUS RULES

Rule 23. Confidentiality.

(a) *Confidentiality Generally.* Confidentiality under these Rules is intended to protect the fairness and thoroughness of the process by which a complaint is filed or initiated, investigated (in specific circumstances), and ultimately resolved, as specified under these Rules.

(b) *Confidentiality in the Complaint Process.*

(1) *General Rule.* The consideration of a complaint by a chief judge, a special committee, a judicial council, or the Committee on Judicial Conduct and Disability is confidential. Information about this consideration must not be publicly disclosed by any judge or judicial employee, or by any person who records or transcribes testimony except as allowed by these Rules. A chief judge, a judicial council, or the Committee on Judicial Conduct and Disability may disclose the existence of a proceeding under these Rules when necessary or appropriate to maintain public confidence in the judiciary's ability to redress misconduct or disability.

(2) *Files.* All files related to a complaint must be separately maintained with appropriate security precautions to ensure confidentiality.

(3) *Disclosure in Decisions.* Except as otherwise provided in Rule 24, written decisions of a chief judge, a judicial council, or the Committee on Judicial

Conduct and Disability, and dissenting opinions or separate statements of members of a council or the Committee may contain information and exhibits that the authors consider appropriate for inclusion, and the information and exhibits may be made public.

(4) *Availability to Judicial Conference.* On request of the Judicial Conference or its Committee on Judicial Conduct and Disability, the circuit clerk must furnish any requested records related to a complaint. For auditing purposes, the circuit clerk must provide access to the Committee on Judicial Conduct and Disability to records of proceedings under the Act at the site where the records are kept.

(5) *Availability to District Court.* If the judicial council directs the initiation of proceedings for removal of a magistrate judge under Rule 20(b)(1)(D)(iii), the circuit clerk must provide to the chief judge of the district court copies of the report of the special committee and any other documents and records that were before the council at the time of its decision. On request of the chief judge of the district court, the judicial council may authorize release to that chief judge of any other records relating to the investigation.

(6) *Impeachment Proceedings.* If the Judicial Conference determines that consideration of impeachment may be warranted, it must transmit the record of all relevant proceedings to the Speaker of the House of Representatives.

(7) *Subject Judge's Consent.* If both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person. In any such disclosure, the chief judge may require that the identity of the complainant, or of witnesses in an investigation conducted under these Rules, not be revealed.

(8) *Disclosure in Special Circumstances.* The Judicial Conference, its Committee on Judicial Conduct and Disability, a judicial council, or a chief judge may authorize disclosure of information about the consideration of a complaint, including the papers, documents, and transcripts relating to the investigation, to the extent that disclosure is justified by special circumstances and is not prohibited by the Act. For example, disclosure may be made to judicial researchers engaged in the study or evaluation of experience under the Act and related modes of judicial discipline, but only where the study or evaluation has been specifically approved by the Judicial Conference or by the Committee on Judicial Conduct and Disability. Appropriate steps must be taken to protect the identities of the subject judge, the complainant, and witnesses from public disclosure. Other appropriate safeguards to protect against the dissemination of confidential information may be imposed.

(9) *Disclosure of Identity by Subject Judge.* Nothing in this Rule precludes the subject judge from acknowledging that he or she is the judge referred to in documents made public under Rule 24.

(10) *Assistance and Consultation.* Nothing in this Rule prohibits a chief judge, a special committee, a judicial council, or the Judicial Conference or its Committee on Judicial Conduct and Disability, in the performance of any function authorized under the Act or these Rules, from seeking the help of qualified staff or experts or from consulting other judges who may be helpful regarding the performance of that function.

(c) *Disclosure of Misconduct and Disability.* Nothing in these Rules and Commentary concerning the confidentiality of the complaint process, or in the Code of Conduct for Judicial Employees concerning the use or disclosure of confidential information received in the course of official duties, prevents a judicial employee from reporting or disclosing misconduct or disability.

Rule 24. Public Availability of Decisions.

(a) *General Rule; Specific Cases.* When final action has been taken on a complaint and it is no longer subject to review as of right, all orders entered by the chief judge and judicial council, including memoranda incorporated by reference in those orders and any dissenting opinions or separate statements by members of the judicial council, must be made public, with the following exceptions:

(1) if the complaint is finally dismissed under Rule 11(c) without the appointment of a special committee, or if it is concluded under Rule 11(d) because of voluntary corrective action, the publicly available materials generally should not disclose the name of the subject judge without his or her consent.

(2) if the complaint is concluded because of intervening events, or dismissed at any time after a special committee is appointed, the judicial council must determine whether the name of the subject judge should be disclosed.

(3) if the complaint is finally disposed of by a privately communicated censure or reprimand, the publicly available materials must not disclose either the name of the subject judge or the text of the reprimand.

(4) if the complaint is finally disposed of under Rule 20(b)(1)(D) by any remedial action other than private censure or reprimand, the text of the dispositive order must be included in the materials made public, and the name of the subject judge must be disclosed.

(5) the name of the complainant must not be disclosed in materials made public under this Rule unless the chief judge or the judicial council orders disclosure.

(b) *Manner of Making Public.* The orders described in (a) must be made public by placing the orders on the court's public website and by placing them in a publicly accessible file in the office of the circuit clerk. If the orders appear to have precedential value, the chief judge may cause them to be published. In addition, the Committee on Judicial Conduct and Disability will make available on the judiciary's website, www.uscourts.gov, selected illustrative orders described in paragraph (a), appropriately redacted, to provide additional information to the public on how complaints are addressed under the Act.

(c) *Orders of Committee on Judicial Conduct and Disability.* Orders of the Committee on Judicial Conduct and Disability constituting final action in a complaint proceeding arising from a particular circuit will be made available to the public in the office of the circuit clerk of the relevant court of appeals. The Committee on Judicial Conduct and Disability will also make such orders available on the judiciary's website, www.uscourts.gov. When authorized by the Committee on Judicial Conduct and Disability, other orders related to complaint proceedings will similarly be made available.

(d) *Complaints Referred to Judicial Conference.* If a complaint is referred to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2), materials relating to the complaint will be made public only if ordered by the Judicial Conference.

Rule 25. Disqualification.

(a) *General Rule.* Any judge is disqualified from participating in any proceeding under these Rules if the judge concludes that circumstances warrant disqualification. If a complaint is filed by a judge, that judge is disqualified from participating in any consideration of the complaint except to the extent that these Rules provide for a complainant's participation. A chief judge who has identified a complaint under Rule 5 is not automatically disqualified from considering the complaint.

(b) *Subject Judge.* A subject judge, including a chief judge, is disqualified from considering a complaint except to the extent that these Rules provide for participation by a subject judge.

(c) *Chief Judge Disqualified from Considering Petition for Review of Chief Judge's Order.* If a petition for review of the chief judge's order entered under Rule 11(c), (d), or (e) is filed with the judicial council in accordance with Rule 18, the chief judge is disqualified from participating in the council's consideration of the petition.

(d) *Member of Special Committee Not Disqualified.* A member of the judicial council who serves on a special committee, including the chief judge, is not disqualified from participating in council consideration of the committee's report.

(e) *Subject Judge's Disqualification After Appointment of Special Committee.* Upon appointment of a special committee, the subject judge is disqualified from participating in the identification or consideration of any complaint, related or unrelated to the pending matter, under the Act or these Rules. The disqualification continues until all proceedings on the complaint against the subject judge are finally terminated with no further right of review.

(f) *Substitute for Disqualified Chief Judge.* If the chief judge is disqualified from performing duties that the Act and these Rules assign to a chief judge (including where a complaint is filed against a chief judge), those duties must be assigned to the most senior active circuit judge not disqualified. If all circuit judges in regular active service are disqualified, the judicial council may determine whether to request a transfer under Rule 26, or, in the interest of sound judicial administration, to permit the chief judge to dispose of the complaint on the merits. Members of the judicial council who are named in the complaint may participate in this determination if necessary to obtain a quorum of the council.

(g) *Judicial-Council Action When Multiple Judges Disqualified.* Notwithstanding any other provision in these Rules to the contrary,

(1) a member of the judicial council who is a subject judge may participate in its disposition if:

(A) participation by one or more subject judges is necessary to obtain a quorum of the judicial council;

(B) the judicial council finds that the lack of a quorum is due to the naming of one or more judges in the complaint for the purpose of disqualifying that judge or those judges, or to the naming of one or more judges based on their participation in a decision excluded from the definition of misconduct under Rule 4(b); and

(C) the judicial council votes that it is necessary, appropriate, and in the interest of sound judicial administration that one or more subject judges be eligible to act.

(2) otherwise disqualified members may participate in votes taken under (g)(1)(B) and (g)(1)(C).

(h) *Disqualification of Members of Committee on Judicial Conduct and Disability.* No member of the Committee on Judicial Conduct and Disability is disqualified from participating in any proceeding under the Act or these Rules because of consultations with a chief judge, a member of a special committee, or a member of a judicial council about the interpretation or application of the Act or these Rules, unless the member believes that the consultation would prevent fair minded participation.

Rule 26. Transfer to Another Judicial Council.

In exceptional circumstances, a chief judge or a judicial council may ask the Chief Justice to transfer a proceeding based on a complaint identified under Rule 5 or filed under Rule 6 to the judicial council of another circuit. The request for a transfer may be made at any stage of the proceeding before a reference to the Judicial Conference under Rule 20(b)(1)(C) or 20(b)(2) or a petition for review is filed under Rule 22. Upon receiving such a request, the Chief Justice may refuse the request or select the transferee judicial council, which may then exercise the powers of a judicial council under these Rules.

Rule 27. Withdrawal of Complaint or Petition for Review.

(a) *Complaint Pending Before Chief Judge.* With the chief judge's consent, the complainant may withdraw a complaint that is before the chief judge for a decision under Rule 11. The withdrawal of a complaint will not prevent the chief judge from identifying or having to identify a complaint under Rule 5 based on the withdrawn complaint.

(b) *Complaint Pending before Special Committee or Judicial Council.* After a complaint has been referred to the special committee for investigation and before the committee files its report, the complainant may withdraw the complaint only with the consent of both the subject judge and either the special committee or the judicial council.

(c) *Petition for Review.* A petition for review addressed to the judicial council under Rule 18, or the Committee on Judicial Conduct and Disability under Rule 22, may be withdrawn if no action on the petition has been taken.

Rule 28. Availability of Rules and Forms.

These Rules and copies of the complaint form as provided in Rule 6(a) must be available without charge in the office of the circuit clerk of each court of appeals, district court, bankruptcy court, or other federal court whose judges are subject to the Act. Each court must also make these Rules, the complaint form, and complaint-filing instructions available on the court's website, or provide an Internet link to these items on the appropriate court of appeals website or on www.uscourts.gov.

Rule 29. Effective Date.

These Rules will become effective after promulgation by the Judicial Conference of the United States.

APPENDIX

COMPLAINT FORM

A two-page complaint form follows.

Judicial Council of the Fifth Judicial Circuit

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. Requests for copies of the rules should be directed to: Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. The rules are also available at www.ca5.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. Only an original of the complaint must be filed. Enclose the copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to: Clerk, United States Court of Appeals for the Fifth Circuit, 600 S. Maestri Place, New Orleans, LA 70130. **Do not put the name of any judge on the envelope.**

1. Name of Complainant: ______________________
   Contact Address: ______________________
   ____
   Daytime telephone: (   ) ______________________
2. Name(s) of Judge(s): ______________________
   Court: ______________________

3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?

☐ Yes ☐ No

If "yes," give the following information about each lawsuit:

Court: ______________________________

Case Number: ______________________________

Docket number of any appeal to the 5th Circuit: ________________

Are (were) you a party or lawyer in the lawsuit?

☐ Party ☐ Lawyer ☐ Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:

____

____

4. Brief Statement of Facts. Attach a brief statement of the specific facts on which the claim of judicial misconduct or disability is based. Include what happened, when and where it happened, when and where it happened, and any information that would help an investigator check the facts. If the complaint alleges judicial disability, also include any additional facts that form the basis of that allegation.

5. Declaration and signature: I declare under penalty of perjury that the statements made in this complaint are true and correct to the best of my knowledge.

(Signature) ______________________________ (Date) ________________

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UNIFORM LOCAL CIVIL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND THE SOUTHERN DISTRICTS OF MISSISSIPPI

Effective December 1, 2014; amended December 1, 2019

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Preamble

The LOCAL UNIFORM CIVIL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN DISTRICT AND THE SOUTHERN DISTRICT OF MISSISSIPPI [the LOCAL RULES] were first made effective on January 1, 1986. The Rules were amended July 1, 1992, July 1, 1996, September 1, 1998, December 1, 2000, November 1, 2004, December 1, 2010, and December 1, 2011; December 1, 2012; and April 30, 2013; and they apply to pending civil actions except where injustice would result. They govern all proceedings in the United States District Courts serving the State of Mississippi, and should be cited as L.U.Civ.R.

Attorneys practicing before the district courts of Mississippi are charged with the responsibility of knowing the LOCAL RULES, the Administrative Procedures for Electronic Case Filing for both the Northern and Southern Districts of Mississippi, the Internal Operating Procedures and Standing Orders of the court and may be sanctioned for failing to comply with them. Posting of the LOCAL RULES on the Internet Websites maintained by the clerks of the district courts is sufficient delivery of the LOCAL RULES to all attorneys and the public.

All prior Local Rules of the United States District Courts for the Northern District and the Southern District of Mississippi relating to civil proceedings are hereby repealed.

All amendments to these LOCAL RULES will be by order of the court and require the approval of a majority of the district judges in each federal judicial district in Mississippi.

Division sites and counties

(Venue)
NORTHERN DISTRICT

WESTERN DIVISION
Oxford
1. Benton
2. Calhoun
3. Grenada
4. Lafayette

EASTERN DIVISION
Aberdeen
1. Alcorn
2. Attala
3. Chickasaw
4. Choctaw

5. Marshall
6. Montgomery
7. Pontotoc
8. Tippah
9. Union
10. Webster
11. Yalobusha

5. Clay
6. Itawamba
7. Lee
8. Lowndes
9. Monroe
10. Oktibbeha
11. Prentiss
12. Tishomingo
13. Winston

DELTA DIVISION

Oxford

1. Bolivar
2. Coahoma
3. DeSoto
4. Panola
5. Quitman
6. Tallahatchie
7. Tate
8. Tunica

GREENVILLE DIVISION

Greenville

1. Carroll
2. Humphreys
3. Leflore
4. Sunflower
5. Washington

SOUTHERN DISTRICT

JACKSON DIVISION

Jackson

1. Amite
2. Copiah
3. Franklin
4. Hinds
5. Holmes
6. Leake
7. Lincoln
8. Madison
9. Pike
10. Rankin
11. Scott
12. Simpson
13. Smith

EASTERN DIVISION

Meridian

1. Clarke
2. Jasper
3. Kemper
4. Lauderdale
5. Neshoba
6. Newton
7. Noxubee
8. Wayne

HATTIESBURG DIVISION

Hattiesburg

1. Covington
2. Forrest
3. Greene
4. Jefferson Davis
5. Jones
6. Lamar
7. Lawrence

WESTERN DIVISION

Natchez

1. Adams
2. Claiborne
3. Issaquena
4. Jefferson
5. Sharkey
6. Warren
7. Wilkinson

8. Marion
9. Perry
10. Walthall

8. Yazoo

SOUTHERN DIVISION
Gulfport
1. George
2. Hancock
3. Harrison
4. Jackson
5. Pearl River
6. Stone

Rule 1. Scope and purposes of rules.

(a) The rules of procedure in any proceeding in this court are those prescribed by the laws of the United States and the Federal Rules of Civil Procedure, along with these local rules and orders entered by the court.

(b) These rules may be known and cited as Local Uniform Civil Rule [L.U.Civ.R.].

(c) The underlying principle of the Rules is to make access to a fair and efficient court system available and affordable to all citizens. (Amended effective December 1, 2010.)

Rule 4. Civil process.

(a) *Preparation.* It is the responsibility of the plaintiff in each original case filed to prepare the summons to be served on each defendant and to present the process to the clerk of court at the time of the filing of the original complaint. The signed process with seal affixed will then be returned to the attorney for service.

(b) *Service.* The United States Marshal does not serve process in civil actions except on behalf of the federal government, in actions proceeding *in forma pauperis,* on writs of seizure and executions of judgments, and when otherwise ordered by a federal court.

Rule 5. Original filings and removals.

(a) *Original filings.* In all civil actions, the plaintiff must file with the clerk of court the original complaint.

(1) *Civil cover sheet.* A civil cover sheet (Form JS 44) must be filed with each original complaint or petition filed. A link to all national forms can be found on the courts' Websites.

(2) *Filing fees.* Filing fees must be paid to the clerk of court upon filing of each original complaint or petition in accordance with the fee schedule maintained by the clerk of court.

(b) *Removals: Required Filing of Entire State Court Record and Unresolved Motions; Removals to Bankruptcy Court.* In addition to the requirements for removal set forth in 28 U.S.C. § 1446, a defendant or defendants desiring to remove any civil action or criminal prosecution from a state court must file a copy of the entire state court record no later than 14 days from the date of removal. Further, within 14 days after the Case Management Conference, the parties must file as separate docket items any unresolved motions that were filed in state court and that they wish to advance.

When removing a state court action to Bankruptcy Court, the Notice of Removal, citing bankruptcy as a jurisdictional basis, must be filed with the United States District Court Clerk's Office in the appropriate district and division. A motion to transfer the case from District Court to Bankruptcy Court must also be promptly filed. When docketing the motion to transfer, counsel will be directed to docket the motion under an event entry on CM/ECF that will generate an immediate notice to the Bankruptcy Court that such a motion has been filed in the District Court. If the movant desires that the motion to transfer be heard immediately, the movant must style the motion "URGENT AND NECESSITOUS" and immediately contact the District Judge's chambers in accordance with L.U.Civ.R. 7(b)(8).

(c) *Electronic Filings; Signatures and Verification; Administrative Procedures.* Rules 5(d)(3) and 83 of the FEDERAL RULES OF CIVIL PROCEDURE and Rule 57 of the FEDERAL RULES OF CRIMINAL PROCEDURE authorize courts to establish practices and procedures for electronically filing, signing and verifying documents. Accordingly, the district courts for the Northern District and the Southern District of Mississippi have implemented Administrative Procedures for Electronic Case Filing prescribing the procedures and standards governing electronically filing, signing and verifying documents.

(d) *Non-Filing of Pre-Discovery Disclosures and Discovery Materials.*

(1) *Pre-Discovery disclosures.* Pre-discovery disclosures of core information under L.U.CIV.R. 26.1(A) should not be filed with the clerk of court until the disclosures are used in a proceeding or the court orders that they be filed. The party serving disclosures must file a notice of service of pre-discovery disclosure of core information [Official Form No. 2(c)].

(2) *Depositions.* As depositions in civil actions are not filed, the court reporter will forward the original of a deposition to the party responsible for its taking; the party must retain the original and is its custodian. Immediately upon receipt of the original deposition, the party serving as custodian must file a copy of the cover sheet of the deposition and a notice that all parties of record have been notified of its receipt by the custodian [Official Form No. 2(a)].

(3) *Discovery.* Interrogatories under FED. R. CIV. P. 33, Requests for Production or Inspection under FED. R. CIV. P. 34, and Requests for Admission under FED. R. CIV. P. 36, must be served upon other counsel or parties, but not filed with the court. The party who served the discovery request or the response must retain the original and become the custodian and file a notice of service with the court [Official Form No. 2(b)].

(4) *Filing for use in relation to motions.* If disclosures under FED. R. CIV. P. 26(a)(1) or (2), interrogatories, requests, answers, responses or depositions are necessary to a pretrial motion that might result in an order on any issue,

unless already of record and referenced by citation to the docket entry(ies), the moving party must file the portions to be used as an exhibit to the motion.

(5) *Filing for use on Appeal.* When documentation of discovery or disclosures not in the record is needed for appeal purposes, a party may apply for a court order directing or the parties may stipulate to the filing of the necessary discovery or disclosure papers. (Amended effective December 1, 2010; amended effective December 1, 2019.)

Rule 5.2. Protection of personal and sensitive information; public access to court files; redacted information; sealed information.

Responsibilities of Counsel and Parties. Counsel should advise clients of the provisions of this rule and Fed. R. Civ. P. 5.2 so that an informed decision may be made about the inclusion of protected information.

(a) Counsel and parties must consider that the *E-Government Act of 2002* (as amended) and the policies of the Judicial Conference of the United States require federal courts eventually to make *all* pleadings, orders, judgments, and other filed documents available in electronic formats accessible over the Internet and the courts' PACER [Public Access to Court Electronic Records] systems. Consequently, personal and sensitive information and data that formerly were available only by a review of the court's physical case files will be available to the world, openly, publicly, and near-instantaneously.

(b) If a redacted document is filed, it is the sole responsibility of counsel and the parties to ensure that all pleadings conform to the redaction-related standards of this rule.

(c) Neither the court nor the clerk will review pleadings or other documents for compliance with this rule.

JUDICIAL DECISIONS

Construction.
Failure to file documents.

Construction.

Inasmuch as this rule refers only to depositions not being filed with the clerk of court, it follows that all other documents listed in Federal Rule of Civil Procedure 5(d) must be filed. McLaurin v. Werner, 909 F. Supp. 447 (S.D. Miss. 1995).

As this rule refers only to depositions not being filed, all other documents listed in Federal Rule of Civil Procedure 5(d) must be filed. Saulsberry v. Atlantic Richfield Co., 673 F. Supp. 811 (N.D. Miss. 1987).

Failure to file documents.

Where plaintiff's attorney failed to file with the court her response to defendants' request for admissions, response was ineffective and therefore statements in question were deemed admitted. Saulsberry v. Atlantic Richfield Co., 673 F. Supp. 811 (N.D. Miss. 1987).

Rule 7. Motions and other papers.

(a) *Trial briefs.* Whether to submit a trial brief is within the discretion of the parties, but any brief must be filed in CM/ECF and simultaneously served on all other parties.

(b) *Motion practice.* Any written communication with the court that is intended to be an application for relief or other action by the court must be presented by a motion in the form prescribed by this Rule.

(1) *Applicability.* The provisions of this rule apply to all written motions filed in civil actions.

(2) *Filing, Deadlines, Proposed Orders.* Any motion, response, rebuttal and supporting exhibits, including memorandum briefs in support, must be filed. All affidavits, 28 U.S.C. § 1746 declarations, and other supporting documents and exhibits, excluding the memorandum brief, must be filed as exhibits to the motion, response or rebuttal to which they relate. The memorandum brief must be filed as a separate docket item from the motion or response and their exhibits. All supporting exhibits must be denominated in the court's electronic filing system by both an exhibit letter or number *and* a meaningful description. Further, all supporting exhibits not already of record and cited in the motion, response or rebuttal by docket entry, must normally be filed under the same docket entry and denominated separately in the court's electronic filing system as exhibits to the motion, response or rebuttal to which they relate, unless doing so is not practicable, in which case supporting exhibits may be filed as separate docket item attachments, associated by the docket number of the motion, response or rebuttal to which they relate. Counsel must file a memorandum brief as a separate docket item from the motion or response to which it relates and *must not make the memorandum brief an exhibit to a motion or response,* except in the case of a motion for leave to submit the referenced memorandum brief. If leave of court is required under Fed.R. Civ. P. 15, a proposed amended pleading must be an exhibit to a motion for leave to file the pleading, and if the motion is granted, the movant must file the amended pleading as a separately docketed item within seven (7) days from entry of the order granting the motion.

(A) Affirmative defenses must be raised by motion. Although the affirmative defenses may be enumerated in the answer, the court will not recognize a motion included within the body of the answer, but only those raised by a separate filing.

(B) Other than discovery motions under Rule 37, a motion may not exceed four pages, excluding exhibits, may contain only the grounds for the request and may not contain legal argument or citations to case law or other secondary authority.

(C) A party must file a discovery motion sufficiently in advance of the discovery deadline to allow response to the motion, ruling by the court and time to effectuate the court's order before the discovery deadline.

(D) Unless otherwise ordered by the Case Management Order, all case-dispositive motions and motions challenging an opposing party's expert must be filed no later than fourteen calendar days after the discovery deadline.

(E) Motions *in limine* other than motions challenging another party's expert must be filed no later than fourteen calendar days before the pretrial conference, and all responses must be filed no later than seven calendar days before the pretrial conference.

(F) A proposed order must be submitted to the judge for any motion that may be heard *ex parte* or is to be granted by consent. If the motion is referred to a magistrate judge, the proposed order must be submitted to the magistrate judge. The addresses for the district judges' and for the magistrate judges' chambers appear in the courts' *Administrative Procedures for Electronic Case Filings.*

(3) *Responses.*

(A) A response to a motion, all affidavits, 28 U.S.C. § 1746 declarations, the response memorandum and other supporting materials, including any objections, must be filed of record. Within the time allowed for response, the opposing party must either respond to the motion or notify the court of its intent not to respond.

(B) A separate response must be filed as to each separately docketed motion.

(C) A response to a motion may not include a counter-motion in the same document. Any motion must be an item docketed separately from a response.

(D) A response to a motion may not be included in the body of a pleading, but rather should be a separately docketed item denominated in the record as a response and should be associated by docket number with the motion to which it responds.

(E) If a party fails to respond to any motion, other than a dispositive motion, within the time allotted, the court may grant the motion as unopposed.

(4) *Memorandum briefs; Documents required with motions; Time limits; Failure to submit required documents; Motions not reurged.* At the time the motion is served, other than motions or applications that may be heard ex parte or those involving necessitous or urgent matters, counsel for movant must file a memorandum brief in support of the motion. Counsel for respondent must, within fourteen days after service of movant's motion and memorandum brief, file a response and memorandum brief in support of the response. Counsel for movant desiring to file a rebuttal may do so within seven days after the service of the respondent's response and memorandum brief. A party must make any request for an extension of time in writing to the judge who will decide the motion. Failure to timely submit the required motion documents may result in the denial of the motion. A pending nondispositive motion not reurged after discovery has been concluded and before the motion deadline, may be deemed moot and denied by operation of this rule.

(5) *Length and Form of memorandum briefs.* Movant's original and rebuttal memorandum briefs together may not exceed a total of thirty-five pages, and respondent's memorandum brief may not exceed thirty-five pages.

(A) *Paper Size, Line Spacing, and Margins.* All memorandum briefs must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(B) *Typeface.* Either a proportionally spaced or a monospaced face may be used. A proportionally spaced face must include serifs, but sans-serif type may be used in headings and captions. Text must be 12-point or larger, except that footnotes may be 11-point or larger.

(C) *Type Styles.* All memorandum briefs must be set in a plain, roman style, although italics, highlighting or boldface may be used for emphasis. Case names must be italicized or underlined.

(6) *Notice and hearings.*

(A) The court will decide motions without a hearing or oral argument unless otherwise ordered by the court on its own motion or, in its discretion, upon written request made by counsel in an easily discernible manner on the face of the motion or response.

(B) An evidentiary hearing or oral argument, where allowed, will be set at a time and place convenient to the judge. The court may, in its discretion, hear oral argument by electronic means.

(7) *Priority.* The court will give priority to discovery motions, discovery appeals, immunity defense motions, motions to remand, and other jurisdictional motions.

(8) *Urgent or Necessitous Matters.* When the motion relates to an urgent or necessitous matter, counsel for the movant must contact the courtroom deputy, or other staff member designated by the judge, and arrange a definite time and place for the motion to be heard. In such cases, counsel for movant must file a written notice to all other parties of the time and place fixed by the court for the hearing and must serve all documents upon other parties. Upon receipt of the motion, the court in its discretion may direct counsel to submit memorandum briefs for the court's consideration.

Unless a party files a motion for a protective order to limit the scope or quash the taking of a deposition within seven days of the date of the notice of deposition, the motion will not be considered urgent or necessitous.

(9) *Court reporters.* If the hearing of a motion requires the presence of a court reporter, the party requesting a court reporter must obtain prior approval from the office of the district or magistrate judge before whom the motion is noticed.

(10) *Non-Dispositive Motions.* All non-dispositive motions must advise the court whether there is opposition to the motion.

(11) *Untimely Motions.* Any nondispositive motion served beyond the motion deadline imposed in the Case Management Order may be denied solely because the motion is not timely served.

(c) *Corporate Disclosure Statement.* A non-governmental corporate party must file a statement identifying all of its parent corporations and listing any publicly-held company that owns ten percent or more of the party's stock. The Corporate Disclosure Statement must be filed as a separate pleading with the party's initial pleading. Each party must supplement the statement within a reasonable time of any change in the disclosure information. (Amended effective December 1, 2014; Amended effective December 1, 2015; amended effective December 1, 2016; amended effective December 1, 2018.)

JUDICIAL DECISIONS

Failure to respond.
Form.
Memorandum of authorities.
Time limits.

Failure to respond.

In declaratory judgment action filed by a rental equipment company alleging breach of contract and indemnification claims against a general contractor and a subcontractor, a motion to intervene as of right under Fed. R. Civ. P. 24(a)(2) by the subcontractor's insurer was granted on the merits and as unopposed under L.U. Civ. R. 7.2 (C)(2). NES Equip. Rentals, L.P. v. Harvey C. Green Constr. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 101178 (N.D. Miss. Dec. 15, 2008).

Pursuant to L.U. Civ. R. 7.2(C)(2), plaintiff's personal injury suit against two manufacturers was dismissed; in addition to the fact that plaintiff failed to effect service upon the manufacturers within the mandatory 120-day period, plaintiff failed to respond to the manufacturers' motion to dismiss. Riley v. Ga. Pac. Corp., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 1440 (N.D. Miss. Jan. 5, 2006), dismissed by 2006 U.S. Dist. LEXIS 1623 (N.D. Miss. Jan. 5, 2006).

Although an inmate failed to respond to a summary judgment motion filed by a county and a development district president in the inmate's civil rights suit, pursuant to L.U. Civ. R. 7.2(C)(2), the court was required to consider the motion on the merits. Rogers v. Peterson, — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 49808 (S.D. Miss. June 27, 2006).

Appellate court found that the district court had not explored whether less severe sanctions would have sufficed, nor was there a clear record of delay or contumacious conduct; therefore, its reliance on L.U. Civ. R. 7.2(C)(2) to dismiss the petition with prejudice was misplaced, and the appellate court vacated the decision. Johnson v. Pettiford, 442 F.3d 917 (5th Cir. 2006).

Form.

In a motorist's suit to recover damages for personal injuries sustained in a car accident, the motorist's request for summary judgment, which was made in his opposition to the motions for summary judgment that were submitted by a construction company and a construction worker, was denied because such a request, under L.U. Civ. R. 7.2, had to be made in a motion. Moran v. Callahan, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 94573 (S.D. Miss. Dec. 11, 2007).

Although the complainant, who sought reconsideration of the district court's interlocutory order adopting the magistrate's report and recommendation to deny the complainant's motion to proceed in forma pauperis under 28 U.S.C.S. § 1915, contacted the district court requesting an evidentiary hearing, upon review of the complainant's motion and L.U. Civ. R. 7.2(F), the district court was not of the opinion that an evidentiary hearing was appropriate. Tyres Frai' Aunt Autrey v. Thames, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 99279 (S.D. Miss. Dec. 8, 2008).

Memorandum of authorities.

Individual defendants' motion to dismiss the claims brought against them in their individual capacities failed because the individual defendants did not cite any authority for the relief they sought, and they requested that they be relieved of the necessity of filing a separate brief and memorandum of authorities because the motion was self-explanatory. C.W.P. v. Brown, — F. Supp. 2d —, 2014 U.S. Dist. LEXIS 136170 (N.D. Miss. Sept. 26, 2014).

Even if plaintiffs had been correct that "straightforward text " of federal rules allowed amendment after dismissal, plaintiffs would have been required to supply court with memorandum supporting their proposition. Hey v. Irving, 176 F.R.D. 235 (N.D. Miss. 1997), aff'd, 161 F.3d 7 (5th Cir. 1998).

Time limits.

Requests for extensions of time were fatally flawed because motions filed after deadlines failed to demonstrate good cause and excusable neglect as required; motions would not be automatically granted under the local rule simply because they were unopposed. Rashid v.

Delta State Univ., 306 F.R.D. 530 (N.D. Miss. 2015).

In a nursing home negligence case, the nursing home and related party defendants did not file their motion in limine to exclude some of the opinions of the nursing expert proffered by the administrator of the estate of a deceased nursing home resident at least 10 days prior to the scheduled pretrial conference; therefore, the motion to exclude was denied as untimely under L.U. Civ. R. 7.2(K). Webster v. Nat'l Heritage Realty, Inc., — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 19584 (S.D. Miss. Feb. 26, 2009).

In a case in which a former inmate's motion for reconsideration was without merit, L.U. Civ. R. 7.2(C)(2) did not require that the grant the motion as unopposed. Rule 7.2(C)(2) provides that a court may grant a motion as unopposed where a response is not timely filed. Walker v. McCullum, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 68090 (S.D. Miss. Sept. 9, 2008).

In a motorist's suit to recover damages for personal injuries sustained in a car accident, the motorist's request for summary judgment, which was made in his opposition to the motions for summary judgment that were submitted by a construction company and a construction worker, was denied under L.U. Civ. R. 7.2(k) because the request was untimely. Moran v. Callahan, — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 94573 (S.D. Miss. Dec. 11, 2007).

Appellants' 2006 Fed. R. Civ. P. 24 motion to intervene in a 1966 school desegregation case was properly denied as untimely where it was filed three months after the entry of a 2006 consent decree between the United States and a school district, appellants could have sought intervention while the widely-publicized negotiations were proceeding over a six-month period, appellants failed to allege any unusual circumstances that would explain the delay and instead stated that they simply needed time to familiarize themselves with the case, appellants failed to seek an extension of time under L.U. Civ. R. 7.2(D), and the U.S. and the school district would be prejudiced by such a late intervention because negotiations would have to begin anew. United States v. Covington County Sch. Dist., 499 F.3d 464 (5th Cir. 2007).

Where the certificate of service attached to defendant's motion indicated that the motion was served on March 8 and, despite the passage of over two months, the plaintiff had yet to file any opposition to the motion or request an extension of time in which to file a response, the motion could properly be granted as unopposed. Baggett v. City of Tupelo, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 6947 (N.D. Miss. May 12, 2000).

Although defendant's motion to dismiss for lack of personal jurisdiction was filed approximately six months after court-ordered motion deadline, it was within court's discretion to consider the motion, where case was not yet set for trial and no pretrial or settlement conferences had been held. Classic Motel, Inc. v. Coral Group, Ltd., 149 F.R.D. 528 (S.D. Miss. 1993).

Plaintiffs' response to defendants' bill of costs was controlled by five day time limit of Federal Rule of Civil Procedure 54(d), rather than ten day limit provided in this rule. Alexandria Assocs. v. Mitchell Co., 800 F. Supp. 1424 (S.D. Miss. 1992).

Plaintiff's cross-motion for summary judgment, filed 5 days after motion deadline, was untimely and was not considered. United States ex rel. T.L. Wallace Constr., Inc. v. Fireman's Fund Ins. Co., 790 F. Supp. 680 (S.D. Miss. 1992).

Defendant's motion was not properly characterized as a motion in limine, as it was not addressed to any particular piece of evidence or type of evidence, and therefore motion was denied as untimely. Wing v. J.C. Bradford & Co., 678 F. Supp. 622 (N.D. Miss. 1987).

Plaintiffs' alleged failure to produce documents on which defendant's motion was based did not excuse defendant's untimely service of motion, where defendant made no attempt to compel production of documents he sought. Wing v. J.C. Bradford & Co., 678 F. Supp. 622 (N.D. Miss. 1987).

Rule 11. Signatures required on pleadings, motions, and other papers.

(a) Consistent with FED. R. CIV. P. 11, the filing of a signed pleading, motion, or other document by any counsel is deemed to signify approval by all co-counsel. All filed, signed documents must contain counsel's name, address, telephone number, fax number, e-mail address, and counsel's bar membership identification number. All documents filed and signed by a party not represented by an attorney must contain the party's name, address, telephone number, fax number, and email address. Every attorney and every litigant proceeding without legal counsel has a continuing obligation to notify the clerk of court of address changes.

(b) *Sanctions — Unreasonable delays.* Any delay or continuance occasioned by a party's failure to abide by these rules may result in the imposition of appropriate sanctions, including assessment of costs and attorneys' fees. In this regard, counsel must immediately notify the appropriate judge if a pending motion is resolved by the parties or if the civil action is settled.

Rule 15. Motions for leave to submit amended and supplemental pleadings.

If leave of court is required under Fed.R. Civ.P. 15, a proposed amended pleading must be an exhibit to a motion for leave to file the pleading, and if the motion is granted, the movant must file the amended pleading as a separately docketed item within seven (7) days from entry of the order granting the motion. (Effective December 1, 2014; amended effective December 1, 2016.)

Rule 16. Pretrial conferences.

(a) *Court order.* The court will issue an Initial Order setting the deadline for the attorney conference required by FED. R. CIV. P. 26(f) and a date for a case management conference [CMC] with the magistrate judge. The court will strive to set the case management conference within sixty days of the filing of the first responsive pleading.

(b) *Exceptions:*

(1) *Removed Civil Actions.*

(A) In removed civil actions in which no motion to remand or motion to refer the action to the bankruptcy court is filed, the attorneys and unrepresented parties must confer as outlined in L.U.CIV.R. 26(f) within forty days, and all other deadlines will be determined accordingly.

(B) A motion to remand or a motion to refer an action to the bankruptcy court will stay the attorney conference and disclosure requirements and all discovery not relevant to the remand or referral issue and will stay the parties' obligation to make disclosures pending the court's ruling on the motions. At the time the remand motion or referral motion is filed, the movant must submit to the magistrate judge an order granting the stay but permitting discovery concerning only the remand or referral issue. The parties must promptly notify the magistrate judge of any order denying a motion to remand or motion to refer and must promptly submit an order lifting the stay.

(C) Within fourteen days of the order lifting the stay, the parties must confer as outlined in L.U.CIV.R. 26(f) [sic] and all other deadlines will be determined accordingly. A scheduling conference will be held within sixty days after the stay is lifted.

(2) *Transferred civil actions.* If the attorneys and unrepresented parties have not already conducted the conference required by FED. R. CIV. P. 26(f) in an action transferred to the district, the parties must do so within fourteen days of the action's transfer and all other deadlines will be determined accordingly.

(3) *Motions to Compel Arbitration and Motions Asserting Immunity or Jurisdictional Defense.*

(A) A motion to compel arbitration, or a motion asserting an immunity defense or a jurisdictional defense must be raised by a separate motion as expeditiously as practicable after service of process. A motion asserting lack of jurisdiction must be filed at least seven days before the Case Management Conference or the movant may be deemed to have waived the automatic stay provision of subsection (B).

(B) Filing a motion to compel arbitration, or a motion asserting an immunity defense or jurisdictional defense stays the attorney conference and disclosure requirements and all discovery, pending the court's ruling on the motion, including any appeal. Whether to permit discovery on issues related to the motion and whether to permit any portion of the case to proceed pending resolution of the motion are decisions committed to the discretion of the court, upon a motion by any party seeking relief.

(C) At the time the motion to compel arbitration, or the motion asserting an immunity defense or jurisdictional defense is filed, the moving party must submit to the magistrate judge a proposed order granting the stay.

(D) The plaintiff must promptly notify the magistrate judge of a decision on the motion and must submit a proposed order lifting the stay. Within fourteen days of the order lifting the stay, the parties must confer in accordance with L.U.CIV.R. 26(c), and all other deadlines will be determined accordingly.

(E) A case management conference will be scheduled within sixty days of the order lifting the stay.

(4) *Civil asset forfeiture actions.*

(A) In civil asset forfeiture actions in which the United States files a motion challenging the claimant's standing, all discovery not relevant to the standing issue will be stayed pending the court's ruling on the standing issue.

(B) At the time the motion challenging the claimant's standing is filed, the United States must submit to the magistrate judge a proposed order granting the stay but permitting discovery on the standing issue.

(C) The parties must promptly notify the magistrate judge of a decision on the standing issue and must submit a proposed order lifting the stay if it is determined that the claimant has standing.

(D) A case management conference will be scheduled within sixty days of the order lifting the stay.

(c) *Submission of written proposed case management plan and scheduling order.* The magistrate judge may require the parties to submit a proposed case management order no later than fourteen days after the attorney conference. [See Official Form No. 1]. Disagreements with the content of the proposed case management order must be noted on the submitted written plan. Each party must submit to the magistrate judge a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the respective positions of the parties, including a candid evaluation of the possibilities for settlement.

(d) *Time of disclosures.* Unless a different time is set by court order or unless a party objects during the attorney conference and states the objection in the proposed case management order, the parties must make the disclosures required by FED. R. CIV. P. 26(a) [L.U.CIV.R. 26.1(a)(1)], no later than fourteen days after the attorney conference, but in no event may they be made later than seven days before the Case Management Conference.

(e) *Case management conference.* On the date set by court order, the magistrate judge will hold a case management conference in accordance with FED. R. CIV. P. 16(b) and 26(f).

(f) *Case management order.*

(1) The judicial officer will enter the case management order no more than fourteen calendar days after the case management conference. [Official Form No. 1].

(2) The court will not require the parties to reserve a period in excess of three weeks for trial following the trial date.

(g) *Settlement Conference.*

(1) The court may schedule an initial settlement conference in the case management plan and scheduling order or by other order as the interests of justice may dictate.

(A) Counsel for any party may request at any time that the judicial officer assigned to the case schedule a settlement conference.

(B) The court may order mediation in addition to, or in lieu of, a settlement conference.

(C) The parties are required to undertake discovery necessary for meaningful settlement discussions before a settlement conference or mediation.

(2) Lead counsel for each party, individual parties not represented by legal counsel, and representatives of each corporate party, organization, or similar entity must appear at the conference. If lead counsel has been admitted *pro hac vice,* local counsel must also appear at the conference.

(A) The party representative attending the conference must have full settlement authority to bind the party for settlement purposes.

(B) If approved in advance by the court, a party or party representative may, in lieu of attending the conference in person, be immediately available by telephone during the entire settlement conference. The court may also order that a representative of any intervening party with full settlement authority also attend the conference in person or be available by telephone.

(C) At the request of any party, the court will issue a notification of the settlement conference which the party may then forward to any entity having any type of subrogation lien that would need to be considered during settlement negotiations. The failure of a party to attend a settlement conference, or to have present at the conference a representative with reasonable settlement authority, may result in the assessment of sanctions against the offending party.

(3) The notice of a settlement conference will set forth the format of the conference and will include any requirement for information or documents that must be submitted to the court before or at the conference.

(4) No statement, oral or written, made by any party to the court or counsel(s) opposite during settlement negotiations under this rule will be admissible or used in any fashion in the trial of the case or any related case.

(5) At least seven days before the settlement conference, each party must submit to the court a confidential memorandum, no longer than three pages, setting forth a brief explanation of the case and a candid appraisal of the respective positions of the parties, including settlement negotiations to date and possible settlement figures. Plaintiff(s) must provide an estimate of damages itemized by category. Counsel must also furnish a good faith estimate of the total expense of carrying the litigation through trial and the appellate processes, if not settled, and must have discussed and must represent to the court that they so discussed these expenses with their clients. The settlement memoranda are not to be exchanged or filed in the record, are to be viewed only by the court, and will be destroyed upon exhaustion of settlement negotiations.

(h) *Cases excluded from scheduling and disclosure requirements.* Those categories of proceedings appearing in FED. R. CIV. P. 26(a)(1)(B) are exempt from the scheduling and disclosure requirements of these rules.

(i) *Alternative dispute resolution program.* The courts have adopted a uniform Alternative Dispute Resolution Plan. That plan is appended to these Local Rules.

(j) *Final pretrial conferences and pretrial orders.*

(1) *Cases in which conference to be held; scheduling; rule of magistrate judge.* A final pretrial conference is to be held in all civil actions, subject only to the exceptions hereinafter noted.

(A) The judicial officer assigned to try the case will attempt to conduct the pretrial conference. If the judicial officer is unable to schedule the pretrial conference in a timely manner, however, then he or she may direct that the conference be held before another judicial officer. This conference will be scheduled not more than forty-five days prior to trial.

(B) Whenever possible, a final pretrial conference will be separately scheduled at a date, place, and hour and for such period of time as the subject matter of the particular civil action may require, but in all events a final pretrial conference will be scheduled in such manner as not to cause undue or inordinate inconvenience to counsel scheduled for final pretrial conferences in other cases.

(2) *When conference may be dispensed with; Pretrial order still required; contents.* The court recognizes that a formal final pretrial conference may not be needed in all cases. The court, either on its own motion or by request of the parties made not later than fourteen days before the scheduled conference,

may determine that a final pretrial conference is unnecessary and excuse the parties from attendance, but in that event the jointly agreed pretrial order must be submitted to the judge before whom the conference was to have been held and all requirements of this rule must be complied with at or before the time and date set for the final pretrial conference, unless the judge fixes another date for submission of the pretrial order. If no formal final pretrial conference is held, counsel must submit to the appropriate judge a jointly agreed final pretrial order [Official Form No. 3] which must set forth:

(A) Any jurisdictional question.

(B) Any questions raised by pending motions, including motions *in limine.*

(C) A concise summary of the ultimate facts claimed by plaintiff(s), by defendant(s), and by all other parties.

(D) Facts established by pleadings or by stipulations or admissions of counsel.

(E) Contested issues of fact.

(F) Contested issues of law.

(G) Exhibits (except documents for impeachment only) to be offered in evidence by the parties respectively. If counsel cannot in good faith stipulate the authenticity or admissibility of a proposed exhibit, the order must identify the same and state the precise ground of objection.

(H) The names of witnesses for all parties, stating who *Will Be Called* in the absence of reasonable notice to opposing counsel to the contrary and who *May Be Called* as a possibility only. Neither rebuttal nor impeachment witnesses need be listed. The witness list must state whether the witness will give fact or expert testimony, or both, whether the witness will testify as to liability or damages, or both, and whether the witness will testify in person or by deposition.

(I) Any requested amendments to the pleadings.

(J) Any additional matters to aid in the disposition of the action.

(K) The probable length of the trial.

(L) Full name, address, and phone number of all counsel of record for each party.

(3) *Submission by magistrate judge to trial judge.* If the pretrial conference is held before a magistrate judge who will not try the case, the magistrate judge will submit the agreed, approved pretrial order to the trial judge, with copies to counsel and to the clerk of court.

(4) *Duty of counsel to confer; exhibits; matters to be considered at conference; sanctions.* The following provisions of this rule apply, regardless of whether the pretrial order is entered by stipulation of the parties or following a formal final pretrial conference:

(A) Counsel must resolve by stipulation all relevant facts that are not in good faith controverted and must exchange with counsel for all other parties true copies of all exhibits proposed to be offered in evidence, other than those to be used for impeachment purposes only, and must stipulate the authenticity of each exhibit proposed to be offered in evidence by any party unless the authenticity of any such exhibit is in good faith controverted.

(B) All exhibits are to be pre-marked, and lists briefly describing each are to be exchanged among counsel and presented to the court at the beginning of the trial, unless otherwise directed by the court.

(C) At any formal final pretrial conference, the judge will confer with counsel regarding proposed stipulations of facts and contested issues of fact and law, and will inquire as to the reasonableness of any party's failure to stipulate or agree as to the authenticity or admissibility of exhibits. If the court determines that any party or his attorney has failed to comply with this rule, such party or his attorney will be subject to appropriate sanctions.

(5) *Depositions.* Depositions to be introduced in evidence other than for rebuttal or impeachment purposes must be abridged before the pretrial conference or submission of the order, as follows:

(A) The offering party must designate by line and page the portions of the deposition it plans to offer.

(B) The opposing party or parties must designate by line and page any additional portions of the deposition to be offered and must identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(C) The offering party must thereafter identify distinctly any portions of the deposition previously designated by any other party to which objection is made.

(D) Videotaped depositions must be edited before trial as required by the pretrial order.

(6) *Procedure at final pretrial conference.* In addition to the preceding provisions, the following provisions apply to the formulation of a pretrial order by formal conference before the magistrate judge, or in any appropriate case, the district judge.

(A) *Counsel must attend: sanctions.* All scheduled conferences must be attended by counsel of record who will participate in the trial and who have full authority to speak for the party and enter into stipulations and agreements. Counsel must have full authority from their clients with respect to settlement and must be prepared to inform the court regarding the prospects of settlement. The court may require the attendance or availability of the parties, as well as counsel. Should a party or his attorney fail to appear or fail to comply with the directions of this rule, an *ex parte* hearing may be held and a judgment of dismissal or default or other appropriate judgment entered or sanctions imposed.

(B) *Preparation for the conference.* Counsel must comply with the requirements of subdivisions (j)(4) and (j)(5) of this rule as soon as practicable before the pretrial conference and submit to the court and counsel opposite a proposed pretrial order setting forth his proposals for inclusion in the pretrial order in accordance with subdivision (j)(2) of this rule and any instructions which the court may in its discretion issue.

(C) *Preparation of the pretrial order.* After the final pretrial conference has concluded, a pretrial order must be prepared by counsel in conformity with Official Form No. 3 and submitted to the court for entry. Responsibility for preparation of the pretrial order and the deadline for its submission will be fixed by the judicial officer before whom the conference was held. If a magistrate judge has conducted the conference on behalf of a district judge, he or she will require counsel to make such corrections as the magistrate judge deems necessary before transmitting the order to the district judge.

(D) *Additional conferences.* After the final pretrial conference has been conducted, the court will not hold an additional pretrial conference except in those exceptional situations in which the judicial officer determines that an additional conference would materially benefit disposition of the action.

(7) *Effect of pretrial order.* The pretrial order controls the subsequent course of the action unless modified by the trial judge at or before the trial, upon oral or written motion, to prevent manifest injustice.

(8) *Conference scheduling; conflicting settings.* In scheduling all pretrial conferences of any nature, the judge will give due consideration to conflicting settings but not to the mere convenience of counsel. If a scheduling order has been entered in an action, no final pretrial conference will be held until after the discovery deadline has expired. Failure to complete discovery within such deadline is not an excuse for delaying the final pretrial conference nor for securing continuance of a case which has been calendared for trial.

(9) *Discretion of district judge.* Notwithstanding any of the provisions of this rule to the contrary, a district judge may, in his or her discretion, in any assigned case, conduct any or all pretrial conferences and may enter or modify a scheduling order.

(k) *Conflicting settings and requests for continuances.* When the court has set a case for trial, other hearing, or pretrial conference that conflicts with a court appearance of counsel in other courts, the first case having a firm setting will control, whether set by this or some other court, and other courts are expected to yield to the prior firm setting, as this court will do when other cases have prior settings in other courts, consistent with the policy adopted by the State-Federal Judicial Council. When a case has not been reached as scheduled, the court, in resetting the case, will take into account the obligations of counsel on the basis of the first-setting rule. If a conflict develops, it is the absolute duty of counsel to inform the court of the later setting in order that the conflict might be resolved and calendars cleared for other settings. It is essential for counsel and the court or courts involved to resolve potential conflicts at the earliest practical date. (Amended effective December 1, 2015; amended effective December 1, 2016; amended effective December 1, 2018; amended effective December 1, 2019.)

JUDICIAL DECISIONS

Modification of scheduling order.
Remand-related discovery.
Time to complete discovery.

Modification of scheduling order.

Where case had not yet been set for trial and no pretrial or settlement conferences had been held, it was within court's discretion to consider defendant's motion to dismiss for lack of personal jurisdiction prior to consideration of his motion for summary judgment. Classic Motel, Inc. v. Coral Group, Ltd., 149 F.R.D. 528 (S.D.

Miss. 1993).

Remand-related discovery.

In a negligence suit, neither plaintiffs' ignorance of S.D. Miss. R. 16.1(B)(2)(b) nor their failure to utilize it to pursue remand-related discovery could be deemed diligent enough to satisfy Fed. R. Civ. P. 60(b)(2); therefore, their motion for reconsideration of a federal district court's denial of their motion to remand to state court based on newly-discovered evidence was denied. Jordan v. Am. Suzuki Motor Corp., — F. Supp. 2d —, 2007 U.S. Dist. LEXIS 80335 (S.D. Miss. Oct. 29, 2007).

Time to complete discovery.

This rule gives attorneys in case, who should be in best position to evaluate case and its discovery needs, wide discretion in obtaining an adequate time for discovery; but rule also requires them to make a realistic estimate of such time. New Hampshire Ins. Co. v. Johnson, 130 F.R.D. 623 (S.D. Miss. 1990).

Rule 23. Class actions.

In all civil actions filed as class actions, the class plaintiff must, at a time directed by the case management order, move for a FED. R. CIV. P. 23 class determination. The plaintiff has the burden of establishing by way of pleadings and evidentiary materials that a class action is appropriate and of defining all relevant classes and subclasses.

Although the court may deem it necessary to schedule an evidentiary hearing on the class aspects of a civil action, usually pleadings, affidavits, other evidentiary materials, and legal memoranda submitted by both sides should be adequate bases upon which the court may make a class action determination. Interlocutory procedures, when appropriate, will be tailored to fit each action.

Counsel for all parties must be aware of the general time schedule set forth above and must promptly prepare all materials that may be relevant to class action maintainability and class definitions. Until the issue of class certification has been decided, counsel must give priority to discovery directed to the class issue.

If additional time is desired for preparation on the L.U.CIV.R. 23 issue(s), a motion stating grounds for the requested delay must be served within the above time period. Delays will be granted only for good cause.

JUDICIAL DECISIONS

Time limits.

Plaintiff's motion for extension of time to move for class certification was denied, where time set forth in this rule had expired and plaintiff failed to show good cause for extending time. Nicolas v. Deposit Guar. Nat'l Bank, 182 F.R.D. 226 (S.D. Miss. 1998).

Rule 26. Discovery control.

(a) *Pre-Discovery disclosure of core information/other cooperative discovery devices.*

(1) *Initial Disclosure.*

(A) Within the time designated in the court's initial order setting the FED.R.CIV.P. 16 conference, the parties must make the disclosure required by FED.R.CIV.P. 26(a)(1). Disclosures must be made no later than seven days before the Case Management Conference unless a different time is set by court order or unless a party objects during the attorney conference and states the objection in the proposed case management order. At the time of the submission of the proposed case management order, the parties must certify that the conference required by FED.R.CIV.P. 26(f) has taken place and that the initial disclosures have been made.

(B) If the documents, electronically stored information, data compilations, and tangible things [collectively "items"] required for production are voluminous, or if other circumstances make their production unduly burdensome or expensive, the party may describe by category and location all such items in its possession, custody or control and must provide the opposing party a reasonable opportunity to review all the items at the site they are located or maintained.

(2) *Expert Witnesses.* A party must make full and complete disclosure as required by FED. R. CIV. P. 26(a)(2) and L. U. CIV. R. 26(a)(2)(D) no later than the time specified in the case management order by serving the disclosure on all counsel of record and concomitantly filing a Notice of Service of Expert Disclosure with the court. Absent a finding of just cause, failure to make full expert disclosures by the expert designation deadline is grounds for prohibiting introduction of that evidence at trial.

(A) For purposes of this section, a written report is "prepared and signed" by the expert witness when the witness executes the report after review.

(B) An attempt to designate an expert without providing full disclosure information as required by this rule will not be considered a timely expert designation and may be stricken upon proper motion or sua sponte by the court.

(C) Discovery regarding experts must be completed within the discovery period. The court will allow the subsequent designation or discovery of expert witnesses only upon a showing of good cause.

(D) A party must designate physicians and other witnesses who are not retained or specially employed to provide expert testimony but are expected to be called to offer expert opinions at trial. No written report is required from such witnesses, but the party must disclose the subject matter on which the witness is expected to present evidence under FED.R.EVID. 702, 703 or 705, and a summary of the facts and opinions to which the witness is expected to testify. The party must also supplement initial disclosures.

(3) *Failure to Disclose.* If a party fails to make a disclosure required by this section, any other party must move to compel disclosure and for appropriate sanctions under FED.R.CIV.P. 37(a). The failure to take immediate action and seek court intervention when a known fact disclosure violation other than as to expert witnesses occurs will be considered by the court in determining the appropriate sanctions to be imposed regarding a subsequent motion filed under FED.R.CIV.P.37(c). Challenges as to inadequate disclosure of expert witness(es) must be made no later than thirty days before the discovery deadline or will be deemed waived. Daubert motions challenging a designated expert must be filed no later than the deadline for dispositive motions or other

deadline for such motions established by the case management order or other order, whichever is later.

(4) *Discovery before the case management conference.* Discovery before the case management conference is governed by FED.R.CIV.P. 26(d)(1) & (2) and 26(f). If discovery under Rules 31, 33 or 36 was served before removal of a case to federal court and the party served has not yet responded, the discovery is considered to have been served at the Case Management Conference.

(5) *Supplementation of discovery.* A party is under a duty to supplement disclosures at appropriate intervals under FED.R.CIV.P. 26(e) and in no event later than the discovery deadline established by the case management order.

(b) *Setting discovery deadlines.* The Case Management Order will establish a firm discovery deadline.

(1) The discovery deadline is that date by which all responses to written discovery, including supplementation of responses, required by the Federal Rules of Civil Procedure must be made and by which all depositions must be concluded. Supplementation of disclosures must be concluded by the discovery deadline.

(2) Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery deadline date to comply with this rule, and discovery requests that seek responses or schedule depositions that would otherwise be answerable after the discovery deadline date are not enforceable except by order of the court for good cause shown.

(3) The parties may not extend the discovery deadline by stipulation or without the consent of the court.

(c) *Attorney/party signatures for requests to extend discovery deadlines.* The court in its discretion may require the requesting attorney and party to sign requests to extend discovery deadlines.

(d) *Limitations on use of discovery.* The court should limit or increase the number of depositions, interrogatories, requests for production and requests for admission to the needs of each particular case. A specific interrogatory/request and its reasonably related subpart will be counted as one interrogatory/request.

(e) *Privilege Logs.* A party withholding information claimed privileged or otherwise protected must submit a privilege log that contains at least the following information: name of the document, electronically stored information, or tangible thing; description of the document, electronically stored information, or tangible thing, which description must included each requisite element of the privilege or protection asserted; date; author(s); recipient(s); and nature of the privilege. To withhold materials without such notices subjects the withholding party to sanctions under FED.R.CIV.P. 37 and may be viewed as a waiver of the privilege or protection.

(f) *FED. R. CIV. P. 26(f) Conference of the Parties.* Early Meeting of Counsel/Attorney Conference. Except in categories of proceedings exempted from initial disclosures by Fed.R.Civ.P. 26(a)(1)(E), the attorneys and any unrepresented parties must confer by telephone or in person as soon as is practicable and no later than the deadline established by the court and discuss, at a minimum, the following:

(1) *Principal issues.*

(A) Identify the principal factual and legal issues in dispute;

(B) Discuss the principal evidentiary basis for claims and defenses;

(C) Determine the number of days required for trial, and whether the case should be considered for ADR procedures.

(2) *Disclosure.*

(A) Discuss the arrangements for exchanging the disclosures required by FED.R.CIV.P. 26(a)(1) and whether any changes should be made in the timing, form, or requirement for such disclosures.

(B) Confer on the following topics relating to electronically stored information [ESI]:

(i) The native format, media, and repositories of discoverable ESI;

(ii) Steps the parties will take to identify and preserve discoverable ESI to avoid a claim of spoliation;

(iii) The scope of e-mail discovery and any e-mail protocol;

(iv) Whether discoverable deleted ESI still exists, the extent to which restoration of deleted ESI is necessary, and who will bear the burden and cost of restoration;

(v) With respect to discoverable ESI, whether embedded data and metadata exist, whether they will be requested or should be produced, and how to address determinations regarding privilege and FED. R. CIV. P. 26(b)(3)-protected ESI;

(vi) Whether responsive back-up and archival ESI exists, the extent to which back-up and archival ESI is needed and who will bear the burden and costs of obtaining such ESI;

(vii) The format and media to be used in the production of ESI;

(viii) The identity of sources and types of potentially discoverable ESI that a party does not intend to subject to discovery;

(ix) Whether any discoverable ESI is not reasonably accessible and the basis for that contention;

(x) If a party intends to seek discovery of ESI from sources or of types identified as not reasonably accessible, the parties should discuss: (i) the burden and cost of accessing and retrieving such ESI; (ii) any putative good cause for requiring production of all or part of such ESI; and (iii) any mitigating conditions such as scope, time, and cost shifting that might reduce the burden or cost of producing ESI that is not reasonably accessible;

(xi) How to handle inadvertent disclosure of privileged or FED. R. CIV. P. 26(b)(3)-protected ESI considering FED.R.EVID. 502.

(3) *Motions.* Identify any motions whose early resolution would have a significant impact on the scope of discovery or other aspects of litigation.

(4) *Discovery.* Determine what discovery is required, when discovery should be completed, whether discovery should be conducted in phases or be limited to or focused upon particular issues, and what limitations should be placed on discovery.

(5) *Jurisdiction by a magistrate judge.* Discuss whether all parties consent to jurisdiction by a magistrate judge under 28 U.S.C. § 636.

(6) *Settlement.* Discuss the possibilities for prompt settlement or resolution of the action and whether it would be helpful to schedule an early settlement conference.

(7) *Preparation of a proposed case management plan and scheduling order.* The proposed order must set forth ADR recommendations, whether all parties consent to trial by a magistrate judge, the date and manner in which disclosures required under FED.R.CIV.P. 26(a) have been made, whether any party objects to the disclosures made and, if so, on what grounds, discovery limitations, deadlines for amendments to pleadings and joinder of additional parties, completion of discovery, designation of experts; filing of motions, including motions for summary judgment, *Daubert* motions, and other motions in limine. The attorneys of record and all unrepresented parties who have appeared in the action are jointly responsible for arranging the conference and attempting in good faith to agree on the proposed case management plan and scheduling order.

(8) *Other orders.* Discuss whether any other orders should be entered by the court under FED. R. CIV. P. 16(b) or (c). (Amended effective December 1, 2014; Amended effective December 1, 2015; amended effective December 1, 2016; December 1, 2018.)

JUDICIAL DECISIONS

Limits on discovery.
Sanctions.
Supplementing expert reports.

Limits on discovery.

Although the claimant's expert designation of certain treating physicians was inadequate and did not adhere to the requirements of N.D. & S.D. Miss. R. 26(a)(2)(D) since, in lieu of summarizing any of the physicians' opinions, the designation instead referenced attached medical records, there was no serious dispute that the opposing party was in receipt of the medical records for the claimant's treating physicians. Accordingly, the physicians were allowed to testify as to the facts and opinions contained within their records, but each physician's testimony was limited to only those medical records reflecting that particular physician's treatment of the claimant. Previto v. Ryobi N. Am., Inc., — F. Supp. 2d —, 2010 U.S. Dist. LEXIS 133344 (S.D. Miss. Dec. 16, 2010).

In an employment discrimination suit, although an employer's expert witness facially complied with Fed. R. Civ. P. 26(a)(2)(B) and L.U. Civ. R. 26.1(A)(2) by revealing the medical documents upon which she based her expert opinion, any portions of the expert's deposition that related to additional medical records not named in her report were barred from introduction at trial. EEOC v. Mazzanti, — F. Supp. 2d —, 2009 U.S. Dist. LEXIS 35340 (N.D. Miss. Apr. 1, 2009).

Because supplemental expert reports of plaintiffs in an action for injuries against a manufacturer were arguably timely under Fed. R. Civ. P. 26(e), (a), and S.D. Miss. R. 26.1, even though they were submitted on the even of the discovery cutoff, the manufacturer was permitted to re-depose the experts at the expense of plaintiffs to eliminate prejudice to the manufacturer. Walker v. George Koch Sons, Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 81919 (S.D. Miss. Sept. 18, 2008).

Regardless of whether affidavits of co-workers were appropriate withheld as attorney work product under Fed. R. Civ. P. 26(b)(5)(A), plaintiffs in an action against a manufacturer failed to provide the required privilege log under S.D. Miss. R. 26.1. Therefore, instead of striking the affidavits under Fed. R. Civ. P. 37, the appropriate sanction was to extend the discovery deadline and to permit the manufacturer to depose the affiants and to conduct limited discovery. Walker v. George Koch Sons, Inc., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 81919 (S.D. Miss. Sept. 18, 2008).

Under "related questions " standard, an interrogatory is to be counted as but a single question for purposes of total allowed under local rule, even though it may call for an answer containing several separate bits of information, if there is a direct relationship between the various bits of information called for. Clark v. Burlington N.R.R., 112 F.R.D. 117 (N.D. Miss. 1986).

Sanctions.

Primary effects of the defendant's failures to comply with its obligations to produce electronically-stored information (ESI) were: (1) the tremendous expense of time and other resources that they have occasioned; and (2) the potential threat to the judicial process posed by such casual disregard for discovery obligations; the defendant's gross negligence in preserving and producing ESI, combined with its legal manager's suspicious and inexcusable disregard for the court's order to cooperate with the special master warranted sanctions under Fed. R. Civ. P. 37. Accordingly, the court ordered the defendant to produce the contents of the legal manager's computer, with the exception of: (1) those materials which are protected by attorney-client privilege; and (2) those materials which include discussion of potential settlement in this matter; moreover, the defendant was instructed to provide a privilege log which complied with S.D. Miss. R. 26(a)(1)(C). PIC Group, Inc. v. LandCoast Insulation, Inc., — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 73342 (S.D. Miss. July 7, 2011).

Supplementing expert reports.

In a case in which an insurance company filed a motion in limine to exclude an expert witness's testimony regarding the reconstruction costs of the insureds' dwelling, the cost opinion was untimely because the expert's supplemental report, which was served on the last day of discovery, was not supplied until after he had been deposed. The insurance company had not had a full and fair opportunity to meet the expert's proposed reconstruction cost testimony, and, under L.U. Civ. R. 26.1(A)(2)(e), his report had to be supplemented in accordance with Fed. R. Civ. P. 26(e). Ross v. Metro. Prop. & Cas. Ins. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 89474 (S.D. Miss. Nov. 3, 2008).

Plaintiff's request that defendant be directed to provide discovery was denied, where plaintiff failed to raise issue of defendant's noncompliance until pretrial conference, nearly six weeks after expiration of discovery deadline. Jarvis v. Wal-Mart Stores, Inc., 161 F.R.D. 337 (N.D. Miss. 1995).

Rule 30. Depositions.

(a) *Audiovisual recording of depositions.* A deposition may be recorded audiovisually as a matter of course in accordance with Fed.R.Civ.P. 30(b)(2).

(1) *Written transcript required.* The recorded deposition must also be taken in the usual manner by a qualified shorthand or machine reporter and a written transcript prepared for use in subsequent court proceedings.

(2) *Scope of scene viewed.* During the deposition the witness must be recorded in as near to courtroom atmosphere and standards as possible. There will not be any zoom-in procedures to unduly emphasize any portion of the testimony, but zoom-in will be allowed for exhibits and charts to make them visible to a jury. The camera must focus as much as possible on the witness. The attorneys may be shown on introduction, the beginning of examination and during objections.

(3) *Witness' approval not required.* A witness need not view or approve the recording of a deposition.

(4) *Availability to parties.* Any party may purchase a duplicate original or edited tape from the video operator technician at any time.

(5) *Editing.* Audiovisually recorded depositions must be edited before the trial as required by the pretrial order.

(6) *Expenses recoverable as cost.* A prevailing party may claim in its bill of costs the court reporter's expenses for audiovisually recorded depositions necessarily obtained for use in the case.

(b) *Depositions of experts.* The court encourages audiovisualrecording of the testimony of expert witnesses.

Rule 35. Physical and/or mental examination.

Every motion for the physical or mental examination of persons in civil actions which is not accompanied by a consent order setting forth the time, place and scope of the examination and the person selected to perform the examination must be accompanied by a statement executed by counsel for the moving party.

Counsel's statement must recite specifically the efforts initiated by counsel to agree upon the details, time, place, and scope of the mental or physical examination and the person proposed to perform the examination, and that the efforts were not successful.

Rule 37. Discovery violations.

(a) *Good faith certificate.* Before service of a discovery motion, counsel must confer in good faith to determine to what extent the issue in question can be resolved without court intervention. A Good Faith Certificate [Official Form No. 4] must be filed with all discovery motions. This certificate must specify whether the motion is unopposed, and if opposed, by which party(ies) and the method by which the matter has been submitted to the magistrate judge for resolution. The certificate must bear the signatures/endorsements of all counsel. If a party fails to cooperate in the attempt to resolve a discovery dispute or prepare the Good Faith Certificate, the filed motion must be accompanied by an affidavit or a 28 U.S.C. § 1746 declaration by the moving party detailing the lack of cooperation and requesting appropriate sanctions.

(b) *Motions must quote disputed language.* Motions raising issues concerning discovery propounded under FED.R.CIV.P. 33, 34, 36, and 37, must quote verbatim each interrogatory, request for production, or request for admission to which the motion is addressed, and must state:

(1) the specific objection;

(2) the grounds assigned for the objection (if not apparent from the objection itself), and

(3) the reasons assigned as supporting the motion.

The objections, grounds and reasons must be written in immediate succession to the quoted discovery request. The objections and grounds must be addressed to the specific interrogatory, request for production, or request for admission and may not be general in nature.

(c) Failure to comply with subsections (a) or (b) of this rule will result in a denial of the motion without prejudice to the party, who may refile the motion upon conformity with this rule.

(d) *L.U.CIV.R. 37 motion to limit or quash a deposition.* The filing of a motion for a protective order to limit or quash a deposition does not operate as a stay of the deposition. It is incumbent upon the party seeking the protection of the court to obtain a ruling on the motion before the scheduled deposition.

JUDICIAL DECISIONS

Failure to attach certificate of good faith.
Failure to comply with rule.

Failure to attach certificate of good faith.

Good faith certificate, as required under L.U. Civ. R. 37.1, was not required before a court could impose sanctions, particularly where plaintiffs were on notice that the issue of sanctions would be revisited if they missed another discovery deadline; plaintiffs did not have a clear intention to resolve this matter without the court's intervention; and the court was free to rule on motions not served in precise compliance with the Local Rules. Anderson v. Wayne Farms, L.L.C., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 105993 (S.D. Miss. Oct. 31, 2008).

Good faith certificate, as required under L.U. Civ. R. 37.1, was not required before a court could impose sanctions, particularly where plaintiffs were on notice that the issue of sanctions would be revisited if they missed another discovery deadline; plaintiffs did not have a clear intention to resolve this matter without the court's intervention; and the court was free to rule on motions not served in precise compliance with the Local Rules. Bolden v. Wayne Farms, L.L.C., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 105991 (S.D. Miss. Oct. 31, 2008).

Good faith certificate, as required under L.U. Civ. R. 37.1, was not required before a court could impose sanctions, particularly where plaintiffs were on notice that the issue of sanctions would be revisited if they missed another discovery deadline; plaintiffs did not have a clear intention to resolve this matter without the court's intervention; and the court was free to rule on motions not served in precise compliance with the Local Rules. Norman v. Wayne Farms, L.L.C., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 105785 (S.D. Miss. Oct. 31, 2008).

Good faith certificate, as required under L.U. Civ. R. 37.1, was not required before a court could impose sanctions, particularly where plaintiffs were on notice that the issue of sanctions would be revisited if they missed another discovery deadline; plaintiffs did not have a clear intention to resolve this matter without the court's intervention; and the court was free to rule on motions not served in precise compliance with the Local Rules. Belue v. Wayne Farms, L.L.C., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 105335 (S.D. Miss. Oct. 31, 2008).

Defendant was not required to attach a good faith certificate pursuant to S.D. Miss. R. 37.1 to its motion for sanctions because the requirement was not jurisdictional and plaintiffs were on notice that defendant would seek sanctions for their failure to comply with standard discovery; it was clear that plaintiffs had neither the intention to cooperate with defendant nor the desire to conserve the resources of the court. Tate v. Wayne Farms, LLC, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 106310 (S.D. Miss. Oct. 31, 2008).

In a case in which an arrestee was bitten by a canine employed by a city and released by a city police officer and the district court granted in part the arrestee's motion to compel responses to two requests for production, Fed. R. Civ. P. 37(a)(5)(A) sanctions would not be imposed. The arrestee had not filed a good faith certificate as required by L.U. Civ. R. 37.1(A), and the objections by the city and the police officer were not unreasonable. Harmon v. City of Southaven, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 35500 (N.D. Miss. Apr. 22, 2008).

Although a corporation was five to eight weeks late in responding to plaintiff's discovery requests, the severe sanction of a default judgment was not warranted because plaintiff's prosecution of his case was not prejudiced by the delay, and further, plaintiff failed to attach a certificate to his motions, as was required by L.U. Civ. R. 37.1(A), to certify that he had conferred in good faith with the corporation to resolve the issue before seeking the court's intervention. Merritt v. UPS, — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 10000 (S.D. Miss. Jan. 15, 2008).

Although the EEOC motion to quash a subpoena duces tecum and ad testificandum that was served on the EEOC by an employer in a race discrimination suit was not accompanied by a certificate of good faith, as required by L.U. Civ. R. 37.1(A), because the attachment of the parties' correspondence to the motion did not satisfy the requirements of Rule 37.1(A), the court considered the merits of the motion because the failure to attach the certificate was not discovered until briefing was completed. Scott v. Lockheed Martin Corp. Aero. Cos., — F. Supp. 2d —, 2006 U.S. Dist. LEXIS 46769 (S.D. Miss. July 10, 2006).

Failure to comply with rule.

In a case in which a limited liability company (LLC) moved for sanctions based on the individuals' failure to respond to standard discovery, the individuals argued unsuccessfully that the motion should be denied because the LLC failed to submit a Good Faith Certificate as required by L.U. Civ. R. 37.1. The parties had been conferring on the issue of discovery for several months, both with and without the court's involvement and there was no need for the LLC to file a Good Faith Certificate, as the individuals were on notice that LLC would be seeking the relief sought herein, and it was clear that the individuals had neither the intention to cooperate with the LLC nor the desire to conserve the resources of the court. Adams v. Wayne Farms, L.L.C., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 106083 (S.D. Miss. Oct. 31, 2008).

In a case in which the insureds did not deny that they failed to comply with the method and requirements set out in L.U. Civ. R. 37.1(B) for making a proper showing for relief and the insureds offered only general assertions related to the insurance companies' discovery responses, a magistrate judge acted well within his discretion in denying the insureds' motion to compel discovery. Marion v. State Farm Fire & Cas. Co., — F. Supp. 2d —, 2008 U.S. Dist. LEXIS 27082 (S.D. Miss. Mar. 17, 2008).

Rule 38. Demand for jury.

(a) *When due; how presented.* In order to exercise the right to jury trial, a party must make a demand for jury trial, including a removed or transferred action, as may be required by FED. R.CIV.P. 38(b) and 81(c)(3)(A). A designation of jury trial on the civil cover sheet is not sufficient for purposes of this rule.

(b) *Within discretion of court.* A request for a jury otherwise presented will be addressed to the sound judicial discretion of the court.

(c) *Removed actions; law and equity actions.* A civil action removed to federal district court from a chancery court of the State of Mississippi shall be designated for non-jury trial.

Rule 42. Consolidation of actions.

In civil actions consolidated under FED.R.CIV. P. 42(a), the action bearing the lower or lowest docket number will control the designation of the district or magistrate judge before whom the motion to consolidate is noticed; the docket number will also determine the judge before whom the case or cases will be tried. Consolidation of actions from different divisions of a district court will be controlled by the earliest filing date. A dismissal of the action bearing the lower or lowest number before the hearing on a motion to consolidate will not affect the operation of this rule. The judge initially assigned the lower or lowest numbered action, even if that action has been dismissed, will be the judge before whom the action(s) will be tried.

JUDICIAL DECISIONS

Factors.

Consolidation was justified, where two cases involved common questions of law and fact, and interests of judicial efficiency and consistency of opinions would be served by consolidation. Morrison v. National Benefit Life Ins. Co., 889 F. Supp. 945 (S.D. Miss. 1995).

Rule 45. Subpoena.

(a) *Witnesses.* Witnesses for trial in paupers' cases must be compelled by subpoena or their voluntary attendance procured.

(b) *Witnesses' attendance and mileage fees.* Tender of the witness fee and mileage is required even if the party requesting the subpoena has been granted leave to proceed in forma pauperis under 28 U.S.C. § 1915, except in habeas corpus cases and proceedings under 28 U.S.C. § 2255.

(c) *Privileged information.* Information which is claimed to be privileged may be filed under seal under the provisions of L.U.CIV.R. 79.

(d) *Non-Party ESI.* Parties issuing a subpoena duces tecum for electronically stored information from non-parties must attempt to meet and confer with the non-party (or counsel, if represented) and discuss the same issues with regard to requests for ESI as set out in L.U.CIV.R. 26.

(e) *Motions regarding subpoenas.* Motions regarding subpoenas will be considered discovery motions and are governed by the procedural requirements that govern discovery motions. (Amended effective December 1, 2014.)

Rule 48. Communication with Jurors.

Upon the return of a verdict by the jury in any civil or criminal action, neither the attorneys in the action nor the parties may, in the courtroom or elsewhere, express to the members of the jury their pleasure or displeasure with the verdict. After the jury has been discharged, neither the attorneys in the action nor the parties may at any time or in any manner communicate with any member of the jury regarding the verdict. Provided, however, that if an attorney believes in good faith that the verdict may be subject to legal challenge, the attorney may apply ex parte to the trial judge for permission to interview one or more members of the jury regarding the fact or circumstance claimed to support the legal challenge. If satisfied that good cause exists, the judge may grant permission for the attorney to make the requested communication and will prescribe the terms and conditions under which it may be conducted.

Rule 51. Requests for jury instructions.

(a) *When due.* Requests for instructions must be submitted not later than fourteen days before the date for which trial is set; additional and revised instructions may be admitted thereafter as the evidence may justify.

(b) *How presented.* Each requested instruction must be on a separate document, shall be numbered (as P-1, et seq. and D-1, et seq.), and must be supported by citation of authority on papers separate from the requested instruction. Copies must be furnished to opposing counsel when the special requests are submitted to the court. Where good cause is shown to exist, counsel may, with the permission of the court, submit additional written requests during the progress of the trial.

(c) *Automated formats.* Parties registered on the court's electronic filing system must submit instructions via electronic mail to the chambers of the trial judge. Proposed instructions should *not*be docketed or filed with the court's CM/ECF system. The addresses for the district judges' and for the magistrate judges' chambers appear on the courts' Internet Websites and in the courts' *Administrative Procedures for Electronic Case Filing.*

(d) *Standard instructions not required.* Counsel should not submit pattern or "boilerplate" instructions which are routinely given by the court. This rule is intended to give the court an opportunity to study requests for instructions tailored specifically for a particular trial. (Amended effective December 1, 2010; amended December 1, 2011.)

Rule 52. Orders and Judgments.

(a) *Manner of presentation.* All proposed orders and judgments must be submitted directly to the district or magistrate judge assigned to the case via electronic mail, in software format as may be designated by the court. The addresses for the district judges' and for the magistrate judges' chambers appear on the courts' Internet Websites and in the courts' *Administrative Procedures for Electronic Case Filings.*

(b) *Service.* The attorney providing the order or judgment must also provide a copy to each party. The clerk of court will provide a copy of the executed order or judgment to each party not in default via the court's electronic filing system.

Rule 54. Judgment; costs.

(a) *Postponement in advance of trial.* Whenever a civil action scheduled for jury trial is required to be postponed, or is settled, or otherwise is disposed of in advance of trial, then jury costs, including mileage and per diem, may, in the court's discretion, be assessed equally against the parties and their counsel or otherwise assessed as directed by the court, unless the court is notified at least one full business day before the day on which the action is scheduled for trial so that the jurors can be notified that it will not be necessary for them to attend.

(b) *Postponement after the case is called.* Whenever a civil action is postponed, settled, or otherwise disposed of after the case is called and before the verdict of the jury, the court may assess jury costs, as described in subparagraph (a), equally against the parties and their counsel, or against the party responsible for the postponement or late settlement.

(c) *Bill of costs.* In all civil actions in which costs are allowed under 28 U.S.C. § 1920 in the final judgment as defined in FED. R. CIV. P. 54(a), the prevailing party to whom costs are awarded must file the bill of costs not later than thirty days after entry of judgment. Unless the court directs otherwise, a motion for review of or objecting to the taxation of costs is subject to the requirements of L.U.CIV.R. 7(b). Except as provided by statute or rule, an appeal of the final judgment does not affect the taxation of costs. (Rule heading amended, effective December 1, 2019.)

JUDICIAL DECISIONS

Factors.
Time limits.

Factors.

Factors set forth in subdivision (b)(3) of this rule are primarily intended to aid district court in deciding proper amount of attorney's fees to award, not whether to make award in the first place. Creations Unlimited, Inc. v. McCain, 889 F. Supp. 952 (S.D. Miss. 1995).

District court did not abuse its discretion in denying appellants reimbursement for certain expenses, where appellants failed to submit bill of costs to clerk of court as required by rule. Riley v. City of Jackson, 99 F.3d 757 (5th Cir. 1996).

Award of costs to nonprevailing party was vacated, due to failure to file bill of costs with district court within thirty days of entry of judgment. Quarles v. Oxford Mun. Separate Sch. Dist., 868 F.2d 750 (5th Cir. 1989).

Time limits.

Plaintiffs' attorney fee claims were not time-barred, since neither memorandum opinion and order nor order permitting interlocutory appeal constituted an entry of judgment for purposes of triggering time limit contained in this rule. Cooper v. Hopkins, 945 F. Supp. 940 (S.D. Miss. 1995).

Post-trial request for attorney's fees was untimely, where it was not filed within thirty days of favorable ruling in question. Quarles v. Oxford Mun. Separate Sch. Dist., 868 F.2d 750 (5th Cir. 1989).

Rule 72. Magistrate Judges.

(a) *Procedures before a Magistrate Judge.*

(1) *Appeal of magistrate judge's decision.*

(A) A party aggrieved by a magistrate judge's ruling may appeal the ruling to the assigned district judge. The appeal is perfected by serving and filing objections to the ruling within fourteen days after being served with a copy of the ruling, specifying the grounds of error. Objections must be filed and served upon the other party or parties. The opposing party or parties must either file a response to the objection or notify the district judge that they do not intend to respond within fourteen days of service of the objections.

(B) No ruling of a magistrate judge in any matter which he or she is empowered to hear and determine will be reversed, vacated, or modified on appeal unless the district judge determines that the magistrate judge's findings of fact are clearly erroneous, or that the magistrate judge's ruling is clearly erroneous or contrary to law.

(2) *Effect of ruling by a magistrate judge.* A magistrate judge's ruling or order is the court's ruling and will remain in effect unless and until reversed, vacated, modified, or stayed. The filing of a motion for reconsideration does not stay the magistrate judge's ruling or order, and no such stay occurs unless ordered by the magistrate judge or a district judge. A stay application must first be presented to the magistrate judge who issued the ruling or order. If the magistrate judge denies the stay, the applicant may request in writing a stay from the district judge to whom the case is assigned. Counsel for the applicant must append to the application to the district judge for a stay a certification by counsel that an application for the stay was made to and denied by the magistrate judge.

(3) *Matters upon which a magistrate judge is required to submit a report and recommendations.* In all matters requiring a full-time magistrate judge to make a report and recommendation to the district court, the magistrate judge must submit the report and recommendation to the district judge and to the clerk of court. After service of a copy of the magistrate judge's report and recommendations, each party has fourteen days to serve and file written objections to the report and recommendations. A party must file objections with the clerk of court and serve them upon the other parties and submit them to the assigned district judge. Within seven days of service of the objection, the opposing party or parties must either serve and file a response or notify the district judge that they do not intend to respond to the objection.

(4) *Rule not applicable to consent cases.* Nothing contained in this rule applies to any civil action referred to a magistrate judge by consent of the parties under L.U.CIV.R. 73, for trial and entry of judgment after the date of reference.

(b) *Assignments to a magistrate judge.* All United States Magistrate Judges serving within the territorial jurisdiction of the Northern District of Mississippi and the Southern District of Mississippi are referred all the powers and duties granted them by the provisions of 28 U.S.C. § 636 within their territorial jurisdictions. In an action referred to a magistrate judge, the magistrate judge will perform the duties assigned by the court under court rule, plan, order, or other document. A magistrate judge will perform other duties when those duties are assigned by the court or a district judge under court rule, plan, order, or other document.

(c) *Notifying parties of non-automatic assignment.* If not effected directly by the clerk of court under court rule, plan, order, or other document, reference of a case or duty to a magistrate judge will be by order signed by a district judge. The clerk of court will notify all parties to the action of each reference by a district judge.

(d) *Referral to magistrate judge.* Pretrial motions in civil actions are hereby referred to a magistrate judge for hearing and determination, subject to the following exceptions: motions for injunctive relief; motions to remand; motions for judgment on the pleadings; motions for summary judgment; motions to dismiss or to permit maintenance of a class action; motions to dismiss for failure to state a claim upon which relief can be granted; motions to involuntarily dismiss an action; motions *in limine* regarding evidentiary matters; and motions affecting the rulings on dispositive motions (e.g., motions to amend) pending before a district judge. Upon entry of a pretrial order, all motions thereafter served must be submitted to the assigned trial judge.

(e) *Hearing of non-dispositive motions when assigned magistrate judge is unavailable.* When the magistrate judge assigned to an action is unavailable because of absence from the district, illness, or other cause, or in a bona fide emergency as the result of which any party would be prejudicially delayed by presenting the matter to that magistrate judge, any other full-time magistrate judge may hear and determine any motion presented by a party, other than a motion enumerated as an exception in 28 U.S.C. § 636(b)(1)(A) and L.U.CIV.R. 72(d). (Amended effective December 1, 2010; amended effective December 1, 2014.)

Rule 73. Procedures before a magistrate judge — civil consent cases.

(a) *Notice of consent option.* Parties may consent at any time before trial to have a magistrate judge:

(1) conduct all further proceedings in the action and order the entry of final judgment; or

(2) hear and determine one or more case dispositive motions designated by the parties.

Either the assigned district judge or the assigned magistrate judge may discuss the consent option with the parties. The parties are free to withhold consent without adverse substantive consequences, and any notice or other communication from the court under authority of this rule will so advise them.

(b) *Execution of consent.* If all parties in a civil action consent to a magistrate judge's exercise of authority described in L.U.CIV.R. 73(a), plaintiff or plaintiff's counsel must file with the clerk of court a *Notice, Consent and Reference of a Civil Action to a Magistrate Judge* (Form AO 0085), signed by all parties or their attorneys. A link to this and other national forms is available on the court's website. The notice will not be docketed without all such signatures; neither the notice nor its contents may be made known or available to a judge if the notice lacks any signatures required under this rule. A party's decision regarding consent must not be communicated to a judge before a fully executed consent notice is filed.

(c) *Time for consent.* Consent in a civil action under L. U. CIV. R. 73(a) may be entered at any time before trial of the case.

(d) *Reference of civil consent action.* An executed notice of consent must be provided to the assigned district judge. The district judge may then refer the case to the magistrate judge for all further proceedings.

(e) *Party added after consent occurs.* A party added to a civil action after reference to a magistrate judge on consent will be given an opportunity to consent to the continued exercise of case-dispositive authority by the magistrate judge. A later-added party electing to consent must, within twenty-one days of its appearance, file a consent, signed by the party or its attorney, with the clerk of court. If a later-added party fails or declines to consent to the magistrate judge's exercise of authority, the action will be returned to the assigned district judge for all further proceedings.

Rule 77. Court Always Open.

There are no terms of court in the United States District Courts of Mississippi.

Rule 79. Sealing of Court Records.

(a) *Court records presumptively in public domain.* Except as otherwise provided by statute, rule, including FED. R. CIV. P. 5.2, or order, all pleadings and other materials filed with the court ("court records") become a part of the public record of the court.

(b) *Documents filed with the court.* Every document used by parties moving for or opposing an adjudication by the court, other than trial or hearing exhibits, must be filed with the court. No document may be filed under seal, except upon entry of an order of the court either acting sua sponte or specifically granting a request to seal that document. Any order sealing a document must include particularized findings demonstrating that sealing is supported by clear and compelling reasons and is narrowly tailored to serve those reasons. A statute mandating or permitting the non-disclosure of a class of documents provides sufficient authority to support an order sealing documents.

(c) *Sealed orders.* A judicial officer may seal a court order, including an order to seal documents and related findings, when sealing a court order meets the standard for sealing a document.

(d) *Stipulations, confidentiality and protective orders insufficient.* No document may be sealed merely by stipulation of the parties. A confidentiality order or protective order entered by the court to govern discovery will not qualify as an order to seal documents for purposes of this rule. Any document filed under seal in the absence of a court order to seal may be unsealed without prior notice to the parties.

(e) *Procedure for filing documents under seal or sealing a case.*

(1) A party submitting a document or portion of a document for filing under seal under a governing statute, rule, or order must note on the face of the document that it or a portion of it is filed under seal under that statute, rule, or order (specifying the statute(s), rule(s) or order(s) relied upon). The clerk will provide public notice by stating on the docket that the document contains sealed material.

(2) Any document not covered by section (e)(1) and filed with the intention of being sealed must be accompanied by a motion to seal. The clerk will provide public notice by docketing the motion in a way that discloses its nature as a motion to seal. The document and any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion. Any filing unaccompanied by a motion to seal will be treated as a public record.

(3) Any motion to seal must be accompanied by a non-confidential supporting memorandum, a notice that identifies the motion as a sealing motion, and a proposed order. A party may also submit a confidential memorandum for in camera review. The non-confidential memorandum and the proposed order must include:

(A) A non-confidential description of what is to be sealed;

(B) A specific request that the document or case:

(1) Be sealed from any access by the public and the litigants' counsel;

(2) Be sealed from public access only, with CM/ECF access permitted to the litigants' counsel; or

(3) Be sealed only from public access in CM/ECF, but available for public viewing at one or more terminals located within the Clerk's office.

(C) A statement of why sealing is necessary, why the specific character of sealing set forth in subparts (1)-(3) above is most appropriate, and why another procedure will not suffice;

(D) References to governing case law; and

(E) Unless permanent sealing is sought, a statement of the period of time the party seeks to have the matter maintained under seal and how the matter is to be handled upon unsealing.

(F) The proposed order must recite the findings required by governing case law to support the proposed sealing. Any confidential memoranda will be treated as sealed pending the outcome of the ruling on the motion.

(f) *Duration of sealing.* Court records filed under seal in civil actions will be maintained under seal until otherwise ordered by the court.

(g) *Non-Filed documents.* Nothing in this Local Rule limits the ability of the parties, by agreement, to restrict access to documents which are not filed with the court. (Amended effective December 1, 2016; amended effective December 1, 2019.)

Rule 81. Cases exempted from these rules.

These Local Rules do not apply to petitions or actions brought by a person:

(a) who seeks a writ of habeas corpus or otherwise challenges a criminal conviction or sentence;

(b) who is proceeding without an attorney and who is in the custody of the United States, a state or a state subdivision and whose claims relate to conditions of confinement; or

(c) who is appealing a decision by the Social Security Administration.

Such actions are governed by orders entered in the particular case itself.

Rule 83.1. Attorneys: admission and conduct.

(a) *General admission of attorneys.*

(1) Any attorney who is a member of the Mississippi Bar shall satisfy the following requirements for admission to this court:

(A) The attorney must produce a photocopy of the certification of admission to practice in Mississippi either from the Mississippi Bar or the Mississippi Supreme Court, dated no later than sixty days prior to its submission;

(B) the attorney must be sponsored by a member of the bar of this court who must certify that the applicant is a member in good standing in the Mississippi Bar and is familiar with the LOCAL RULES and the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT; and

(C) the attorney must be presented to the court only after filing his or her documentation with the clerk of court, paying the admission fee, and signing the oath. An applicant may then be presented to a district or magistrate judge of this court for formal admission, which may be accomplished in open court or in chambers at any time convenient to the judge. An applicant for admission may be presented for formal admission to any district or magistrate judge in either the Northern or Southern District of Mississippi.

(b) *Appearances.*

(1) *Requirement of local counsel.* When a party appears by attorney, every complaint, answer, motion, application, notice of deposition, or other paper on behalf of the represented party must be signed, and every deposition, mediation, conference or hearing must be attended by at least one attorney of record admitted to the general practice of law in the district court in which the action is pending.

(2) *Designation of lead counsel.* In any civil action in which a single party is represented by multiple counsel, the initial pleadings filed on behalf of the party must designate at least one attorney as lead counsel.

(3) *Withdrawal by attorneys.* When an attorney enters an appearance in a civil action, he or she must remain as counsel of record until released by formal order of the court. An attorney may be released only on motion signed by the client(s) or upon a duly noticed motion to all parties, including the client and presented to the judicial officer to whom the case is assigned, together with a proposed order authorizing counsel's withdrawal.

(c) *Discipline and reinstatement.*

(1) *Original discipline.* The court may, after notice and an opportunity to show cause to the contrary, if requested, censure or reprimand any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules, the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT, or any other rule of the court. If the conduct or failure to comply is found to be flagrant, the court may, after notice and opportunity to show cause, revoke or suspend the attorney's admission to practice before the court. Such action by the court will be reported by the clerk of the court to the executive director of the Mississippi Bar, or the appropriate official of the bar of any non-resident attorney admitted to practice before this court. If the court finds that the conduct complained of affords reasonable grounds for more stringent disciplinary action, including suspension or disbarment, the matter will, in the case of a member of the Mississippi Bar, be referred to the Mississippi Bar for appropriate action under MISS. CODE ANN. § 73-3-301, et seq. (1972) or subsequent amendments. If the attorney is not a member of the Mississippi Bar, the matter will be referred to the appropriate disciplinary authority of the bar of which he or she is a member.

Nothing herein may be construed to limit the inherent disciplinary power of the judicial officers of this court, including the power of a district judge to immediately suspend a member of the bar convicted of a felony in a case heard before him or her.

(2) *Reciprocal discipline.* When it is shown to the court that any member of its bar has been suspended or disbarred from practice by any other court of record, the member will be subject to suspension or disbarment by the district court. The disciplinary action is initiated by a show-cause order issued by the court, notifying the attorney that disciplinary proceedings have been commenced, describing the disciplinary proceedings conducted in the other jurisdiction, and requesting that the member appear and show cause why he or she should not be suspended or disbarred from practice before the district court. The member will be afforded thirty days to show cause why he or she should not be suspended or disbarred; the time for response may be extended by the court for proper reason. The member's response to the show-cause order is limited to claims of (A) lack of procedural due process in the original proceedings or (B) lack of substantial evidence to support the factual findings. Lack of procedural due process in the original proceedings, however, does not preclude original disciplinary action by the court as provided in subparagraph 1. Upon response to the show-cause order, and after hearing, if one is requested, or upon expiration of the period allowed for response, if no response is made, the court may enter an appropriate order in which it may impose discipline, including, but not limited to, the same discipline administered by the other jurisdiction.

(3) *Reinstatement.* No application for relief from suspension or reinstatement after disbarment will be considered by this court unless the applicant can show that he or she is an attorney in good standing with the Mississippi Bar or with the jurisdiction in which he or she may have been suspended or disbarred. Any attack upon the denial of readmission or relief from suspension/reinstatement after disbarment is limited to claims of (A) lack of procedural due process in the reinstatement proceeding of the other jurisdiction or (B) lack of substantial evidence to support the factual findings. Upon the applicant's showing of good standing, the court may vacate or continue the disbarment or suspension, or diminish the suspension, as may be appropriate.

(d) *Pro hac vice admission of attorneys:*

(1) *Definitions.*

(A) A "non-resident attorney" is a person not admitted to practice law in this state but who is admitted in another state or territory of the United States or of the District of Columbia and is not disbarred or suspended from practice in any jurisdiction.

A non-resident attorney is eligible for admission pro hac vice if that lawyer:

i. lawfully practices solely on behalf of the lawyer's client and its commonly owned organizational affiliates, regardless of where the lawyer resides or works; or

ii. neither resides nor is regularly employed at an office in this state; or

iii. resides in this state but (a) lawfully practices from offices in one or more other states and (b) practices no more than temporarily in this state, whether by admission pro hac vice or in other lawful ways; or

iv. is a government attorney employed on a full time basis and is lawfully admitted to practice in another jurisdiction.

(B) A "resident attorney" is an attorney admitted to practice in either the Northern or Southern District of Mississippi after complying with L.U.CIV.R. 83.1(a).

(C) A "client" is a person for whom or entity for which the nonresident attorney has rendered services or by whom the attorney has been retained before the lawyer performs services in this state.

(D) "This state" refers to Mississippi. This rule governs proceedings before any federal court located in this state.

(2) *Authority of the Court to Permit Pro Hac Vice Admissions.* A federal court of this state may, in its discretion, admit an eligible non-resident attorney retained to appear in a particular civil proceeding pending before that court to appear pro hac vice as counsel in that proceeding. No admission will be effective until all required fees are received by the clerk of the court. This rule provides the only authority under which a nonresident attorney who is not a member of the Mississippi Bar and not admitted to practice before the Mississippi Supreme Court may practice in a United States District Court serving Mississippi. These rules contain no "grandfathering" provision allowing a non-resident attorney not a member of the Mississippi Bar to practice in a district court other than on a case-by-case pro hac vice admission.

(3) *Association and duties of a resident attorney.* No eligible nonresident attorney may appear pro hac vice unless and until a resident attorney has been associated. The resident attorney remains responsible to the client and responsible for the conduct of the proceeding before the court. It is the duty of the resident attorney to advise the client of the resident attorney's independent judgment on contemplated actions in the proceedings if that judgment differs from that of the non-resident attorney. At least one resident attorney must sign every pleading filed with the court and must personlly appear and participate in all trials, in all pretrial conferences, case management conferences and settlement conferences, hearings and other proceedings conducted in open court, and all depositions or other proceedings in which testimony is given.

(4) *Pro hac vice application.* A non-resident attorney seeking to appear pro hac vice in a proceeding pending in a federal court of this state must submit a verified application, as set out in Form 6, to associated counsel. Local counsel will retain the original application and file it, in the format required by the Administrative Procedures for Electronic Case Filing, in the court where the litigation is filed, accompanied by a certificate of good standing issued within ninety days of the date of the application by the licensing authority for all states, as well as the District of Columbia, where the applicant has been admitted to practice law. The application must be served on all parties who have appeared in the case and must include proof of service. The verified application must contain the following information:

(A) the applicant's residence and business address;

(B) the name, address, and phone number of each client sought to be represented;

(C) the courts before which applicant has been admitted to practice and the respective period(s) of admission;

(D) whether the applicant (i) has been denied admission pro hac vice in this state, (ii) has had admission pro hac vice revoked in this state, or (iii) has otherwise formally been disciplined or sanctioned by any court in this state in the last five years. If so, specify the nature of the allegations; the name of the authority bringing such proceedings, the caption of the proceedings, the date filed, what findings were made, and what action was taken in connection with those proceedings;

(E) whether any formal, written disciplinary proceeding has ever been brought against the applicant by a disciplinary authority in any other jurisdiction within the last five (5) years and, as to each such proceeding: the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings;

(F) whether the applicant has been formally held in contempt or otherwise sanctioned by any court in a written order in the last five (5) years for disobedience to its rules or orders, and, if so, the nature of the allegations; the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substances of the court's rulings (a copy of the written order or transcript of the oral rulings must be attached to the application);

(G) the name and address of each court and a full identification of each proceeding in which the applicant has filed an application to appear pro hac vice in this state within the preceding two years; the date of each application; and the outcome of the application;

(H) the style and number of each case, including the name of the court, in which the applicant has appeared as counsel pro hac vice within the immediately preceding 12 months, is presently appearing as counsel pro hac vice, or has pending applications for admission to appear pro hac vice;

(I) an affirmative statement that the applicant has read and is familiar with the LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND SOUTHERN DISTRICT OF MISSISSIPPI and the ethics, principles, practices, customs and usages of the legal profession in the State of Mississippi, including but not limited to the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT required of the members of the Mississippi Bar as well as the procedures of this court;

(J) the name, address, telephone number, e-mail address and bar number of the resident attorney whom the applicant has associated in the particular case; and

(K) the signature of the resident attorney associated by the applicant certifying the resident attorney's agreement to the association and his/her appearance of record with the non-resident attorney.

The non-resident attorney's application may provide the following optional information:

i. the applicant's prior or continuing representation in other matters of one or more of the clients the applicant proposes to represent and any relationship between those other matter(s) and the proceeding for which the applicant seeks admission;

ii. any special experience, expertise, or other factor the applicant believes to make it particularly desirable that the applicant be permitted to represent the client(s) the applicant proposes to represent in the particular case.

(5) *Application fee.* Simultaneously with the filing of the verified application, the applicant must pay a non-refundable fee in an amount set by the court by general order. An applicant will not be required to pay the fee established by L.U.CIV.R. 83.1(b)(5) if the applicant will not charge an attorney fee to the client(s) and is:

(A) employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving the client(s) of such programs; or

(B) applying to appear in a habeas corpus proceeding for an indigent defendant; and

(C) not compensated by the Court under the Criminal Justice Act.

(6) *Objection to application:* A party to the proceedings may file an objection to the application or seek the court's imposition of conditions to its being granted. The objecting party must file its written objection by way of a verified affidavit containing or describing information establishing a factual basis for the objection and may seek denial or modification of the application. If the application has already been granted, the objecting party may move that the pro hac vice admission be revoked. The court may grant or deny the application or modification of the application without the necessity of any hearing, at the court's discretion.

(7) *Standards for admission.* The court has discretion whether to grant applications for admission pro hac vice and to set the terms and conditions of admission. An application ordinarily should be granted unless the court finds reasons to believe that:

(A) admission would be detrimental to the prompt, fair and efficient administration of justice;

(B) admission would be detrimental to legitimate interests of parties to the proceedings other than the client(s) the applicant proposes to represent;

(C) one or more of the clients the applicant proposes to represent would be at risk of receiving inadequate representation and cannot adequately appreciate the risk;

(D) the applicant has engaged in more than five (5) separate unrelated cases or other matters before the Northern and Southern Districts of the federal courts of this state within the last twelve (12) months immediately preceding the appearance in question; or

(E) the applicant had, before the application, filed or appeared in the federal court without having secured approval under these rules.

(8) *Revocation of admission.* Admission to appear as counsel pro hac vice in a proceeding will be revoked if the attorney is suspended or disbarred by any other court of record during the pendency of the action in which he or she has

been granted leave to appear, and lack of due process or lack of substantial evidence to support the factual findings in the original proceeding will not preclude revocation. Admission to appear as counsel pro hac vice in a proceeding may also be revoked for any of the reasons listed in Section 7(a-c) above or just cause determined by the court.

(9) *Suspension or disbarment of resident attorney.* In the event the resident attorney associated by the non-resident attorney in a particular case is suspended, disbarred, or incapacitated by virtue of health or otherwise from the practice of law in the State of Mississippi, the nonresident attorney before further proceeding in the pending case, must associate a new resident attorney who is in good standing to practice law in Mississippi and admitted to practice in the Northern or Southern District federal courts for the State of Mississippi and must file an amendment to the verified application required by L.U.CIV.R. 83.1(4).

(10) *Attorneys representing the United States.* Attorneys representing the United States or any of its departments, agencies or employees are permitted to appear on behalf of the United States government and to represent its interests in any matter in which the United States government is interested upon proper introduction to the court by the United States Attorney for the district or one of the United States Attorney's assistants.

(e) *Authorization to practice law in the Northern and Southern Districts of Mississippi Federal Court.* A law student who is enrolled in a legal internship program or a clinical legal education course in an American Bar Association accredited law school of this state and who has been granted limited admission under the Mississippi Limited Practice Act, Miss. Code Ann. §§ 73-3-201 to -211 (1972), may also be authorized to engage in limited practice in this court with the following additional conditions and limitations:

(1) The law student who applies for admission to limited practice must certify that the student is familiar with federal procedural and evidentiary rules as well as these Local Rules. The law student must take the oath and be admitted to limited practice by order of a judicial officer of this court.

(2) Upon filing the oath and order in the office of the clerk of court, the law student will be authorized to engage in limited practice in any federal court in the state subject to any controls and limitations ordered by the court.

(3) The authority for limited practice by a law student will continue during any regular school term during which the law student is enrolled in a legal internship or clinical legal education course, including interim sessions between terms. The court may revoke the authority granted at any time.

(4) A law student may not directly represent clients but may only assist the supervising attorney or clinical teacher, who must be admitted to practice in this court and otherwise meet the requirements of Miss. Code Ann. §73-3-205, in representing their clients. All pleadings and entries of record in courts must be signed by the supervising attorney or clinical teacher.

(5) Law students may appear and participate in trials and hearings in court if the supervising attorney or clinical teacher is present and supervising the student.

(6) Law students assigned to prosecuting attorneys may assist the supervising attorney before grand juries subject to the same prohibitions and penalties as to disclosure and secrecy as are members of the grand jury.

(7) Law students will be subject to the same standards and rules of professional conduct and ethics and the same rules of discipline as members of the bar of this court, and each must certify in writing that the student has read and is familiar with the Mississippi Rules of Professional Conduct.

(8) A law student may not receive compensation for the student's services from the client or from any other source, directly or indirectly, for participation, other than the award of academic credit by the student's law school. This rule does not prevent the court from awarding costs and expenses which may otherwise be authorized by law to any governmental agency, legal assistance program, or law school clinical instruction program for the services provided by the student. As in all other cases, the court will determine the propriety and amount of an award of costs, including reasonable attorney's fees.

The judicial officer before whom a student is participating may, at any time and with or without cause and for any reason, revoke the authorization established by this Rule. (Amended effective December 1, 2014; effective December 1, 2016; amended effective December 1, 2019.)

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Discretion of court.
Pro hac vice appearance.

Discretion of court.

This rule contains no specific requirement as to whether pleading must be signed by attorney admitted to practice before court in which action is pending before filing will be deemed effective, and therefore admission of attorneys to practice before court rests within court's discretion. American Express Travel Related Servs. Co. v. Chandler, 139 B.R. 817 (Bankr. S.D. Miss. 1992).

Pro hac vice appearance.

Where only one attorney signed an 11 U.S.C.S. § 523(a)(2)(A) complaint in compliance with Bankr. N.D. & S.D. Miss. R. 5005-1(a)(2)(A) by having an "s" mark appear before his name, and where the signing attorney did not satisfy the requirements for pro hac vice admission in Bankr. N.D. & S.D. Miss. R. 9010-1(b)(1), or the admission rules for the district court in N.D. & S.D. Miss. R. 83.1, then he was not authorized to practice law in the bankruptcy court, and his signature on the complaint did not satisfy the requirements of Fed. R. Bankr. P. 9010 and 9011. However, the debtor's motion to strike pleadings and dismiss the adversary was denied because under the remedial clause of Rule 9011, the attorney was entitled to remedy those errors, as the problem with the signature was not sufficiently called to the attention of the creditor or the attorney until the hearing on the debtor's motion, when the court clarified the law regarding admission to practice, as the absence of an explicit statement in the Local Rules regarding the requirements for general admission to practice before the bankruptcy court warranted a finding that the law regarding admission to practice was ambiguous and vague. Knesel v. Davis (In re Davis), — Bankr. —, 2011 Bankr. LEXIS 1751 (Bankr. S.D. Miss. May 10, 2011).

Even if complaint was considered defective as a result of being filed prior to entry of order granting permission to appear pro hac vice, any such defect was deemed a technical defect not affecting timeliness of complaint. American Express Travel Related Servs. Co. v. Chandler, 139 B.R. 817 (Bankr. S.D. Miss. 1992).

Rule 83.2. Assignment of Judges.

The assignment of judges in civil cases shall be in accordance with the internal procedures adopted by each court.

Rule 83.3. Exhibits.

(A) *Custody and Disposition of Exhibits.* All exhibits, including models, diagrams, or other material items, filed in a proceeding must be physically removed by the parties who filed them, in the event no appeal is perfected, within sixty days from the date of final disposition of the case by this court, or, in the event an appeal is perfected and thereafter disposed of, within thirty days after receipt of the judgment, other process, or certificate disclosing disposition of the case by that court. In the event the exhibits are not removed from the custody of the clerk within the required time, the clerk may destroy or otherwise dispose of the exhibits.

(B) *Custody of Sensitive Exhibits.* Sensitive exhibits include, but are not necessarily limited to, drugs, weapons, currency, pornography, and items of high monetary value. Sensitive exhibits offered or received in evidence will be maintained in the custody of the clerk of court during the hours in which the court is in session. At the conclusion of each daily proceeding and at the noon recess, the clerk will return all sensitive exhibits to the offering counsel or party, who must then be responsible for maintaining custody and the integrity of such exhibits until the next session of court, at which time they must be returned to the clerk, unless otherwise ordered by the court. Following the return of a verdict in a jury case, or the entry of a final order in a non-jury case, sensitive exhibits will be handled or disposed of in the same manner as other exhibits under this rule.

Rule 83.4. Cameras and electronic devices.

(A) *Photography and Broadcasting Prohibited.* Taking photographs, video or audio recordings or broadcasting by radio, television or other means in or from the courtroom or its environs is prohibited, regardless of whether the court is actually in session. The environs of the courtroom extend to all portions of the building in which a courtroom is located, including hallways, stairs, and elevators.

(B) *Electronic devices prohibited.* Electronic devices capable of transmitting images or messages are prohibited in the courtroom except when such equipment is being utilized by parties, attorneys and support personnel directly involved in the litigation before the Court. Cellular telephones must be turned off or in the vibrate/silent mode in the courtroom.

(C) These provisions may be relaxed or modified in the discretion of the presiding judge, unless otherwise prohibited by statute, rule or Judicial Conference policy. (Rule heading amended effective December 1, 2014.)

Rule 83.5. Mississippi Rules of Professional Conduct.

An attorney who makes an appearance in any case in the district court is bound by the provisions of the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT and is subject to discipline for violating them.

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Conflict found under Mississippi Rules of Professional Conduct. Where a paralegal worked for defendant lenders' prior counsel, and then worked for different plaintiff consumers' counsel, and all the consumer fraud cases involved the same lenders, claims and documents, and nearly identical facts, a substantial relationship existed requiring disqualification of plaintiff consumers' counsel under Miss. R. Prof. Conduct 1.6, 1.9(a), and 1.10(b). Owens v. First Family Fin. Servs., 379 F. Supp. 2d 840 (S.D. Miss. 2005).

Rule 83.6. Bankruptcy.

All cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11 are referred to the bankruptcy judges of this District pursuant to 28 U.S.C. § 157(a). (Added effective December 1, 2016.)

Rule 83.7. Alternative dispute resolution.

(a) *Introduction and purpose.* The United States District Courts for the Northern and Southern Districts of Mississippi developed this alternative dispute resolution ("ADR") Local Rule to implement the Alternative Dispute Resolution Plan (the "Plan") mandated by the Alternative Dispute Resolution Act of 1998, 28 U.S.C. § 651, et seq. The Plan is designed to provide access to effective ADR techniques and to encourage mutually satisfactory resolutions of disputes in all stages of civil litigation.

(b) *Administration of ADR plan.* The chief judge of each district will designate a judicial officer, knowledgeable in ADR practices, to implement, administer, oversee, and evaluate the ADR Plan. In addition, the court may from time to time solicit recommendations from state and federal bar associations, committees and organizations interested in ADR regarding ADR programs and efficient methods of coordinating ADR resources in the state and federal courts.

(c) *Voluntary Use of Other Methods.* Nothing in this Local Rule prohibits parties from voluntarily engaging in any form of ADR, such as arbitration, mediation, early neutral evaluation, mini-trial or other appropriate ADR processes at any time.

(d) *Definitions.*

(1) An "ADR Action" is any activity in which the parties mutually engage by consent or directive of the court using ADR methods such as mediation or a settlement conference in an effort to resolve issues short of a trial.

(2) Mediation is a process in which impartial persons assist parties in reaching settlements. Mediators facilitate communications between the par-

ties and assist them in their negotiations. When appropriate, mediators may also offer objective evaluations of cases and may make settlement recommendations.

(3) A settlement conference is a mediation conducted by the court.

(e) *Cases Appropriate for ADR.*

(1) *Discretion of court.* The determination of whether a matter should be referred for ADR is addressed to the sound discretion of the judicial officer assigned to the case. One of the ADR methods set forth in this Local Rule must be used in all cases, unless exempted by this Local Rule or, at the discretion of the court, waived in a particular case for just cause.

(2) *Actions Exempted from Consideration for ADR.* The following categories of proceedings are exempt from consideration for ADR: an action for review on an administrative record; a petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence; and an action brought without counsel by a person in custody of the United States, a state, or a state subdivision.

(f) *Procedures for ADR.*

(1) *Early Conferral Regarding ADR.* In the FED. R. CIV. P. 26(f) Conference, counsel must confer regarding any discovery or other conditions precedent which they believe are needed for a meaningful and effective mediation or settlement conference, as well as the time necessary to complete them. Counsel must inform the magistrate judge in their respective Confidential Settlement Memoranda of any discovery and other conditions precedent which they believe are necessary for meaningful ADR, as well as an estimate of the time necessary to complete them. Any party who believes there is just cause to forego ADR in a case must detail the basis for that belief in the Confidential Settlement Memorandum.

(2) *Case Management Order Provision Regarding ADR.* After considering the parties' positions on ADR, the magistrate judge will incorporate an ADR deadline in the Case Management Order. The ADR deadline will be a date no later than the close of the discovery period and preferably sooner, subject to the particularities of the case. The ADR deadline should permit sufficient time for such discovery necessary to enable the parties to have an effective mediation or settlement conference, but be sufficiently in advance of the discovery deadline to encourage early discovery and the avoidance of unnecessary expense. No later than the ADR deadline, the parties must report to the magistrate judge all ADR efforts the parties have undertaken.

(3) *Report Regarding ADR Required before Final Pre-Trial Conference.* Before the Final Pre-Trial Conference, the parties must report to the magistrate judge all efforts the parties have made to comply with this Local Rule or provide sufficient facts to support a finding of just cause for failure to comply.

(4) *Pre-ADR Procedures.* If the parties elect to mediate a case, the premediation procedures, including those relating to any position statements, will be determined by the mediator selected by the parties. Alternatively, should the parties utilize a settlement conference, the judicial officer conducting the conference will direct the pre-settlement conference procedures at the

time the settlement conference is scheduled. At a minimum, the parties must submit new Confidential Settlement Memoranda by a deadline set by the judicial officer.

(g) *Authority to Settle.*

(1) *Disclosure.* Fourteen days before any mediation or settlement conference, the parties will disclose to all other parties and the mediator or the judge conducting the settlement conference the identities of all entities and persons required to be present for meaningful mediation to take place, including those persons or entities having authority to settle the case, as well as non-party persons or entities whose presence would be required in order to fully resolve all issues in the case (such as persons or entities who may hold a subrogated interest in one or more claims).

(2) *Appearance at Mediation or Settlement Conference.* Counsel, including lead trial counsel for all parties, must appear at the mediation or settlement conference unless otherwise ordered by the court. If the case involves attorneys admitted pro hac vice, local counsel must also attend. If there is the potential for insurance coverage for one or more claims, and if the judicial officer has excused their presence, a representative of each insurance company involved, with full authority to settle the case, nevertheless, must be on standby and available by phone for the duration of the entire mediation or settlement conference.

(3) *Attendance of Parties.* All parties, including representatives of corporate parties, organizations or other entities, as well as individual parties, must appear in person at the mediation or settlement conference throughout the entire mediation or settlement conference unless excused in advance by the court. If a judicial officer permits any party or representative of a party to participate in the mediation or settlement conference by remote electronic means, that party or representative must be available throughout the entire mediation or settlement conference. Office closings and time zone differences do not excuse a company representative from continued participation under this Local Rule. Each Party representative must have full authority to settle the case.

(4) *Post-Mediation report to court.* Within seven days of the completion of a mediation conducted under this Local Rule, counsel must inform the magistrate judge in writing, using Form No. 7, whether or not the case was resolved, and, if settled, any remaining conditions precedent to entry of an agreed order of dismissal.

(h) *Sanctions.* If a party, party representative or attorney fails to appear or be available at a scheduled mediation or settlement conference as required by this Local Rule, or if a party, party representative or attorney is substantially unprepared to participate in the mediation or settlement conference, or if a party, party representative or attorney fails to participate in good faith during a mediation or settlement conference, a judicial officer upon motion or upon the judicial officer's own initiative, may impose appropriate sanctions including reasonable expenses and attorneys' fees incurred.

(i) *Mediatiors.*

(1) *Court-Appointed Panels.* In lieu of a unique federal panel of mediators, the court refers parties to the persons offering their services as mediators who meet the qualifications for inclusion on the List of Mediators provided for in Section X of the Court-Annexed Mediation Rules for Civil Litigation issued by the Mississippi Supreme Court on October 8, 1998 in *In Re: Authorization of Court-Annexed Mediation in Chancery, Circuit and County Courts,* No. 89-R-99026 S. Ct., and the Order of March 22, 1999 establishing minimum qualifications for inclusion on the list.

(2) *Use of Non-Panel Mediators.* Parties may use any person as a mediator, whether or not that person is on the List of Mediators referenced in this Local Rule, unless the mediator is disqualified by this Local Rule, ethical rules or by law.

(3) *Immunity.* Any mediator serving under this Local Rule is performing quasi-judicial functions and is entitled to the immunities and protections that the law accords to persons serving in such capacity.

(4) *Codes of Ethics and Standards of Conduct.* Any mediator serving under this Local Rule is subject to all ethical rules and standards of conduct set by statute, by the Judicial Conference of the United States, and by other professional organizations to which the mediator may belong or that may be approved or adopted by the court. If a mediator discovers a circumstance requiring disqualification, then the mediator must promptly inform the parties and the court of those circumstances in writing.

(5) *Disqualification. No person may serve as a mediator:*

(A) in violation of the standards set forth in 28 U.S.C. § 455;

(B) in violation of any applicable standard of professional responsibility or rule of professional conduct;

(C) in violation of any additional standards adopted by the court; or

(D) if the mediator discovers a circumstance requiring disqualification.

(j) *Confidentiality of proceedings.*

(1) *General Rule of confidentiality.* Except as otherwise provided in L.U.Civ.R. 83.7(j)(4) or required by law, all communications made in mediation or settlement conference are confidential. Mediation- and settlement conference-related communications are not subject to disclosure and may not be used as evidence against any party or participant in any judicial or administrative proceeding.

(2) *No compelled disclosure.* Except as provided in L.U.Civ.R. 83.7(j)(4) or required by law, no party, party's attorney, party's representative, mediator or judicial officer is subject to process requiring disclosure of confidential information or data related to a mediation or settlement conference conducted under this Local Rule, nor may such persons be compelled to testify in any proceeding related to matters occurring during a mediation or settlement conference.

(3) *Limitations on communications with court.* Except as provided in L.U.Civ.R. 83.7(j)(4) or required by law, a person participating in mediation or settlement conference under this Local Rule may not be compelled to disclose to the court any communication made, position taken, or opinion formed by any party or mediator in connection with mediation or settlement conference.

(4) *Exceptions to the general rule of confidentiality.* The only circumstances which may make it appropriate for a party, a party's attorney, a party's

representative, a mediator or a judicial officer to disclose a confidential communication arising from proceedings governed by this Local Rule is a finding by the court that such testimony or other disclosure is necessary to:

(A) prevent a manifest injustice;
(B) enforce a settlement;
(C) help establish a violation of criminal law; or
(D) prevent harm to the public health or safety. (Amended December 1, 2010.)

Rule 83.8. RICO Cases.

(a) In all cases in this court in which claims are asserted under the Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1961, a RICO Statement, conforming to the requirements of this order, must accompany the filing of the RICO complaint.

(b) This Statement must include the facts the Plaintiff is relying upon to initiate this RICO complaint as a result of the "reasonable inquiry" required by FED. R. CIV. P. 11. This Statement must be in a form which uses both the numbers and letters as set forth below and must, in detail and with specificity:

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d).

(2) List each Defendant and state the alleged misconduct and basis of liability of each Defendant.

(3) List the alleged wrongdoers, other than the Defendant(s) listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering must include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the "circumstances constituting fraud or mistake shall be stated with particularity." FED. R. CIV. P. 9(b). Identify the time, place, and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of the predicate acts;

(E) State whether civil litigation has resulted in a judgment in regard to the predicate acts;

(F) Describe how the predicate acts form a "pattern of racketeering activity"; and,

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of each enterprise must include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function, and course of conduct of the enterprise;

(C) State whether any Defendants are employees, officers, or directors of the alleged enterprise;

(D) State whether any Defendants are associated with the alleged enterprise;

(E) State whether the Plaintiff is alleging that the Defendants are individuals or entities separate from the alleged enterprise, or that the Defendants are the enterprise itself, or are members of the enterprise; and,

(F) If any Defendants are alleged to be either the enterprise itself or members of the enterprise, explain whether such Defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State whether the Plaintiff is alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity. In either event, describe in detail.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and,

(B) Describe the use, investment, or locus of such income.

(12) If the Complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the Complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and,

(B) State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

(14) If the Complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(16) List the actual damages for which Defendant is allegedly liable.

(17) List all other federal causes of action, if any, and provide citations to the relevant statute(s).

(18) List all pendent state claims, if any.

(19) Provide any additional information that you feel would be helpful to the Court in considering your RICO claim.

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ADMIRALTY AND MARITIME RULES — DISTRICT COURTS OF MISSISSIPPI

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Rule A. Scope and general provisions.

(1) *Applicability.* These rules apply to the procedures in admiralty and maritime claims within the meaning of Fed. R. Civ. P. 9(h), which in turn are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure [Admiralty Supplemental Rules] in the United States District Courts in the State of Mississippi. As used in these Local Admiralty Rules, the term "judicial officer" or "court" means either a United States District Judge or a United States Magistrate Judge.

(2) *Citation format.*

(a) The Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure should be cited as "Supplemental Rule [____]."

(b) The Local Admiralty and Maritime Rules must be cited as "Local Admiralty Rule (L.A.R. [____])."

(3) *Application of local admiralty and maritime rules.* The Local Admiralty Rules apply to all actions governed by L.A.R. A(1), and to the extent possible should be construed to be consistent with the other local rules of this court. To the extent that a Local Admiralty Rule conflicts with another local rule of this court, the Local Admiralty Rule controls.

(4) *Designation of "In Admiralty" Proceedings.* All pleadings filed in a Fed. R. Civ. P. 9(h) action should set forth the words, "IN ADMIRALTY" following the designation of the court.

(5) *In Rem Admiralty and Maritime Jurisdiction.* In any action brought in rem under the admiralty and maritime jurisdiction of this court, a plaintiff may present a motion and order for the arrest of property to any judicial officer within the district, in the event that the judicial officer assigned to the matter is not readily available to review the pleadings. If a plaintiff has procured a person, firm, or corporation to serve as a substitute custodian of seized property, any judicial officer in the district may sign an order, supported by a motion, permitting the United States Marshal to deliver the property seized to the substitute custodian, assuming the motion is joined by all parties or is being submitted before the appearance of any opposing party. In addition to any other supporting reasons, a plaintiff petitioning to transfer seized property to a substitute custodian must show, by means of a Certificate of Insurance or other sufficient proof of insurance, that there is sufficient insurance coverage for the vessel/property while in the possession of the substitute custodian, and must maintain the coverage in place during the pendency of the case. The insurance must comply with the mandates of the United States Marshal and specifically name the substitute custodian as a named insured.

(6) *Verification of pleadings.* Every complaint or claim made under the Admiralty Supplemental Rules must be verified on oath or affirmation by a party, or an officer of a corporate party. If no party or corporate officer is within the district, verification of a complaint or claim may be made by an agent, attorney-in-fact, or attorney of record, who declares the sources of the signer's knowledge or the contents of the verified document, that the document verified is true to the best of the signer's knowledge, the reason why verification is not made by the party or corporate officer, and that the signer has signatory authority. The verification will be deemed to be that of the party, as if verified personally. Any interested party may move, with or without a request for stay, for a personal oath of a party or all parties, or that of a corporate officer. If required by the court, verification must be procured by commission or as otherwise ordered.

(7) *Amendment of Pleadings to Add or Delete Rule 9(h) Designations.* In any case in which a plaintiff makes a maritime claim within the meaning of Fed. R. Civ. P. 9(h), but the plaintiff could also bring all or a portion of the claims under a different source of jurisdiction and thereby request a trial by jury, the plaintiff's motion to amend the pleadings to either add or delete the Rule 9(h) designation must be made by the general deadline set for amendments to all pleadings. Likewise, in any case in which a plaintiff makes a maritime claim within the meaning of Rule 9(h) and also demands a jury trial, the plaintiff must designate the division of those claims by the deadline set for amendment to pleadings, in the absence of a designation, the entire case will proceed under Rule 9(h) and be set for trial without jury. If a plaintiff elects to drop a Rule 9(h) designation entirely, any vessel or other property previously seized under the Admiralty Supplemental Rules must be immediately released from the custody of the U.S. Marshal or the substitute custodian, upon the motion of any party.

(8) *Issuance of process.* Except as limited by Supplemental Rules (B)(1) or (C)(3) and L.A.R. B(3) or C(2), or in suits prosecuted in forma pauperis and

sought to be filed without pre-payment of fees or costs, or without security, all process will be issued by the court without further notice of the court.

(9) *Publication of notices.* Unless otherwise required by the court or applicable Local Admiralty or Supplemental Rule, whenever a notice is required to be published by any statute of the United States or by any Supplemental Rule or Local Admiralty Rule, the notice must be published in a newspaper of general circulation in the district where the lawsuit is pending, once a week for three consecutive weeks. If the action involves a marine casualty and is pending in a district other than where the marine casualty occurred, then the plaintiff must also publish the required notice in a newspaper of general circulation where the casualty occurred. All plaintiffs must use due diligence to provide direct notice to all known or reasonably anticipated claimants.

(10) *Form and return of process in personam actions.* Unless otherwise ordered by the court, Fed. R. Civ. P. 9(h) process must be by civil summons, and must be returnable twenty-one (21) days after service of process; except that process issued in accordance with Supplemental Rule (B) must conform to the requirements of that rule.

(11) *Taxation of costs.* If costs are awarded to any party, the following may be taxed as costs in the case, in the manner provided for a civil action:

(a) The reasonable premium or expenses paid on all bonds or stipulations or other security by the party to whom costs are awarded.

(b) Reasonable wharfage or storage charges while in custody of the court.

(c) Costs of publication of notices under applicable rules of court.

(d) Any other reasonable expenses determined by the court, on motion and after hearing, to have been necessarily incurred and proper as costs.

(12) *Forms - Admiralty and Maritime Rules.* Examples of forms which may be used in admiralty and maritime actions are located on the courts' Websites under "Admiralty Forms." These forms provide illustrations of format and content, but they are neither mandatory nor exhaustive. (Effective December 1, 2010.)

Rule B. Attachment and garnishment: Special provision.

(1) *Definition of "Not Found Within the District."* In an action in personam filed under Supplemental Rule (B), a defendant will be considered "not found within the district" if the defendant does not have a physical address locatable within the district where the action is filed by means of typical reference sources such as a telephone directory or listing with the Secretary of State or if there is evidence that despite the listing of a physical address within the district, no individual is present at any reasonable time to receive a summons and complaint as contemplated by Fed.R.Civ.P. 4(d). The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit setting forth the basis for classifying the defendant as "not found within the district." See Admiralty Form 28 on the courts' Websites.

(2) *Pre-seizure Requirements.* In accordance with Supplemental Rule (B)(1), the process of attachment and garnishment will issue only after one of the following conditions has been met:

(a) *Judicial Review Before Issuance.* Except as provided in L.A.R. B(3)(b), a judicial officer must review the verified complaint and any other relevant case papers before the clerk issues the requested process of attachment and garnishment. No notice of this pre-arrest judicial review is required to be given to any person or prospective party.

If the judicial officer finds that probable cause exists to issue the process of attachment and garnishment, plaintiff must prepare an order that substantially conforms to Admiralty Form 1 on the courts' Websites for the judicial officer's signature directing the clerk to issue the process.

Upon receipt of the signed order, the clerk will enter the order and issue the summons and process of attachment and garnishment as contemplated by L.A.R. B(3)(c). Thereafter the clerk may issue supplemental process without further order of court.

(b) *Certification of Exigent Circumstances.* If the plaintiff files a written certification that exigent circumstances make review by the court impracticable, the clerk will issue a summons and the process of attachment and garnishment in accordance with L.A.R. B(2)(c).

(c) *Preparation and Issuance of the Process of Attachment and Garnishment.* Plaintiff must prepare the summons and the process of attachment and garnishment and deliver the documents to the clerk for filing and issuance.

The process of attachment and garnishment must substantially conform to Admiralty Form 2 on the courts' Websites and must give adequate notice of the post-seizure provisions of L.A.R. B(4).

(d) *United States Marshal's Return of Service.* The United States Marshal must file a return of service indicating the date and manner in which service was perfected and, if service was perfected upon a garnishee, the United States Marshal will indicate on the return the name, address, and telephone number of the garnishee.

(e) *Use of substitute custodian.* If a substitute custodian is used in an attachment or garnishment proceeding, the plaintiff must follow the same requirements of L.A.R A(5).

(3) *Notification of Seizure to Defendant.* In an in personam action under Supplemental Rule (B), plaintiff or garnishor must initially attempt to perfect service of the notice in accordance with Supplemental Rule (B)(2)(a) or (b).

However, when service of the notice cannot be perfected in accordance with Supplemental Rule(B)(2)(a) or (b), plaintiff or garnishor must by affidavit offer proof required by Supplemental Rule (B)(2)(c) that the plaintiff or the garnishor has tried diligently to give notice of the action to the defendant, but has been unable to do so.

(4) *Post-attachment Review Proceedings.*

(a) *Filing a required answer.*

(i) *By defendant.* In accordance with Supplemental Rule (E)(4)(f), any person who claims an interest in property seized under Supplemental Rule (B) must file an answer and claim against the property within thirty (30) days after service of process has been executed, whether by attachment or service on the garnishee. The answer and claim must describe the nature of the claimant's interest in the property and articulate reasons why the seizure should be vacated. The claimant must serve a copy of the answer and claim upon plaintiff's counsel, the United States Marshal, and any other party to the litigation, along with a Certificate of Service indicating the date and manner in which service of the answer and claim was made.

(ii) *By garnishee.* The garnishee must file an answer to the Complaint and respond to any discovery served with the Complaint within twenty-one days after service.

(b) *Hearing on the answer and claim.* The claimant may be heard before a judicial officer not less than three days after the answer and claim has been filed and served on the plaintiff.

If the court orders that the seizure be vacated, the judicial officer may also award reasonable attorney's fees, costs and other expenses incurred by any party as a result of the seizure.

If the seizure was predicated upon a showing of "exigent circumstances" under L.A.R. B(3)(b), and the court finds that exigent circumstances did not exist, the court may award reasonable attorney's fees, costs, and other expenses incurred by any party as a result of the seizure.

(5) *Procedural Requirement for the Entry of Default.* In accordance with Fed.R.Civ.P. Rule 55, a party seeking the entry of default in a Supplemental Rule (B) action must file a motion and supporting legal memorandum and offer other proof sufficient to demonstrate that due notice of the action and seizure have been given in accordance with L.A.R. B(4)

Upon review of the motion, memorandum, and other proof, the clerk should, where appropriate, enter the default of a party in accordance with Fed.R.Civ.P. Rule 55(a), and will serve notice of the entry of default upon all parties who have appeared in the action.

(6) *Procedural requirements for the entry of default judgment.* Not later than thirty days after notice of the entry of default, the party seeking the entry of default judgment must file a motion with appropriate exhibits and supporting legal memorandum sufficient to support the entry of default judgment. The moving party must serve these papers upon every other party to the action and file a Certificate of Service indicating the date and manner in which service was made.

A party opposing the entry of default judgment must file written opposition to the motion within seven days of receipt of the motion. Unless otherwise ordered by the court, the motion for the entry of default judgment will be heard without oral argument.

Unless a motion to be continued is granted, a default judgment establishes a right on the part of the party or parties in whose favor it is entered and will be considered prior to any claims of the owner of the defendant property against which it is entered and to the remnants and surpluses thereof but does not establish plaintiff's priority of entitlement to possession of defendant property over non-possessory lien claimants. Obtaining a judgment by default will not preclude the party in whose favor it is entered from contending and proving that all, or any portion, of the claim or claims encompassed within the judgment are entitled to priority over any non-possessory lien claims. (Effective December 1, 2010; Amended effective December 1, 2015.)

Rule C. Actions in rem.

(1) *Verification requirements.* Every complaint and claim filed in an in rem proceeding under Supplemental Rule (C) must be verified in accordance with L.A.R. A(6) and B(2).

(2) *Pre-seizure Requirements.* In accordance with Supplemental Rule (C)(3), the process of arrest in rem may issue only after one of the following conditions has been met:

(a) *Judicial Review Before Issuance.* Except as provided in L.A.R. C(2)(b), no seizure warrant may be issued until a judicial officer has reviewed the verified complaint and any other relevant case papers and entered an order directing the clerk to issue the warrant for arrest or summons in rem. No notice of this pre-seizure judicial review is required to be given to any person or prospective party.

The plaintiff must submit a proposed order to the judicial officer directing the clerk to issue a warrant of arrest or summons to be entered in the event that the court finds that probable cause exists for an action in rem. The order must substantially conform to Admiralty Form 3 on the courts' Websites.

After entry of the signed order, the clerk will issue the warrant for arrest or summons in accordance with L.A.R. C(2)(c). The warrant must conform to Admiralty Form 4 on the courts' Websites. Thereafter, the clerk may issue supplemental process without further order of the court.

(b) *Certification of exigent circumstances.* If the plaintiff files a written certification that exigent circumstances make review by the court impracticable, the Clerk will issue a warrant of arrest or summons.

At any post-arrest proceedings under Supplemental Rule (E)(4)(f) and L.A.R. C(7), plaintiff has the burden of showing that probable cause existed for the issuance of process and that exigent circumstances existed which precluded judicial review in accordance with L.A.R. C(2)(a).

(c) *Preparation and Issuance of the Warrant for Arrest or Summons.* Plaintiff must prepare the warrant for arrest or summons, and deliver them to the clerk for filing and issuance.

The warrant for arrest must substantially conform to Admiralty Form 4 on the courts' Websites and must give adequate notice of the post-arrest provisions of L.A.R. C(7) to all parties including, but not limited to, any person or entity known to plaintiff to have a claim or interest in the vessel or property seized.

(3) *Special Requirements for Actions Involving Freight, Proceeds or Intangible Property.*

(a) *Instructions to Be Contained in the Summons.* Unless otherwise ordered by the court, the summons must order the person having control of the freight, proceeds or intangible property to either:

(i) File a claim within fourteen days after service of the summons in accordance with L.A.R. C(6)(a); or

(ii) Deliver or pay over to the United States Marshal the freight, proceeds or intangible property, in the form that the property is typically represented, or a part of the property which is sufficient to satisfy plaintiff's claim.

The summons must also inform the person having control of the freight, proceeds or intangible property that service of the summons has the effect of arresting the property and prohibiting the release, disposal or other distribution of the property without prior order of the court.

(b) *Requirements for Claims to Prevent the Delivery of Freight, Proceeds or Intangible Property to the United States Marshal.* Any claim filed in accordance with Supplemental Rule (E)(4) and L.A.R. C(6)(a) must describe the nature of claimant's interest in the property and articulate reasons why the seizure should be vacated.

The claim, accompanied by a certificate of service, must be served upon the plaintiff, the United States Marshal, and all other parties to the litigation.

(c) *Delivery or Payment of the Freight, Proceeds or Intangible Property to the United States Marshal.* Unless a claim is filed in accordance with Supplemental Rule (E)(4)(f), and L.A.R. C(6)(a), any person served with a summons issued under L.A.R. C(2)(a) or (b) must, within fourteen days after execution of service, deliver or pay over to the United States Marshal all, or part of, the freight, proceeds or intangible property sufficient to satisfy plaintiff's claim. Between the time that the summons is served and the property delivered or the court rules on a motion to prevent the delivery of the property, the person served with the summons may not remove the property from the district or otherwise transfer or dispose of it.

Unless otherwise ordered by the court, the person tendering control of the freight, proceeds or intangible property will be excused from any further duty with respect to the property in question.

(4) *Publishing Notice of the Arrest as Required by Supplemental Rule (C)(4).*

(a) *Time for publication.* If the property is not released within fourteen days after the execution of process, the notice required by Supplemental Rule (C)(4) must be published by the plaintiff in accordance with L.A.R. A(9), and must begin not later than twenty-one days after execution of process. The notice must substantially conform to Admiralty Form 5 on the courts' Websites. See also Admiralty Forms 6, 7 and 8.

(b) *Proof of publication.* Not later than fourteen days after the last day of publication plaintiff must file a copy of the actual notice and proof of publication in the form of a sworn statement by or on behalf of the publisher or editor indicating the dates of publication.

(5) *Undertaking in lieu of arrest.* If, before or after the commencement of an action, a party accepts any written undertaking to respond on behalf of the vessel or other property in consideration of plaintiff's refraining from seeking arrest of the vessel or other property, the undertaking will only respond to orders or judgments in favor of the party accepting the undertaking and any parties expressly named in it, and only to the extent of the benefit conferred in the undertaking. See Admiralty Form No. 9 on the courts' Websites.

(6) *Time for Filing Claim or Answer.* Unless otherwise ordered by the court, any claimant of property subject to an action in rem must:

(a) File the claim within fourteen days after process has been executed. See Admiralty Form Nos. 10 and 11 on the courts' Websites; and

(b) Serve an answer within twenty-one days after filing the claim.

(7) *Post-arrest proceedings.* Upon filing a claim, the claimant may also file a motion and proposed order directing plaintiff to show cause why the arrest should not be vacated, and if after a hearing on the motion the court vacates the arrest because the plaintiff did not have a reasonable basis to seize the claimant's property, the court may award attorney's fees, costs, and other expenses incurred by any party as a result of the arrest.

Additionally, if the seizure was predicated upon a claim of "exigent circumstances" under L.A.R. C(2)(b), and the court finds that exigent circumstances did not exist, the court may award attorneys' fees, costs and other expenses incurred by any party as a result of the seizure.

(8) *Procedural Requirements for Entry of Default.* In accordance with Fed.R.Civ.P. 55(a), a party seeking the entry of default judgment in rem must first move for entry of default and then file its motion and supporting legal memorandum.

The party seeking the entry of default must also file proof sufficient to demonstrate that due notice of the action and arrest have been given by:

(a) Service upon the master or upon the person having custody of the property; and

(b) Delivery, personally or by certified mail, return receipt requested (or international effective equivalent), to every other person, entity, including any known owner, who has not appeared or intervened in the action, and who is known to have, or claims to have, a possessory interest in the property.

The party seeking entry of default judgment under Local Rule C(8) may be excused for failing to give notice to such "other person" upon a satisfactory showing that diligent effort was made to give notice without success; and

(c) Publication as required by Supplemental Rule (C)(4) and L.A.R. C(4). The clerk may, where appropriate, enter default in accordance with Fed.R.Civ.P. 55(a). The clerk will serve notice of the entry of default upon all parties represented in the action.

(9) *Procedural Requirements for Entry of Default Judgment.* Not later than thirty days after notice of the entry of default, the moving party must file a motion, and supporting legal documents, for the entry of default judgment under Fed.R.Civ.P. 55(b). The moving party may also file as exhibits to the motion such other documentation as may be required to support the entry of default judgment.

(a) *When No Person Has Filed a Claim or Answer.* Unless otherwise ordered by the court, the motion for default judgment will be considered by the court without oral argument.

(b) *When Any Person Has Filed an Appearance, But No Claim or Answer, or Has Filed a Claim or Intervention But Has Not Answered.* If any person has filed an appearance, claim or intervention in accordance with L.A.R. C(6), but does not join in the motion for entry of default judgment, the party seeking the entry of default judgment must serve notice of the motion upon the party not joining in the motion, and any opposing party will have seven days from receipt of the notice to file written opposition with the court.

A default judgment establishes a right on the part of the party or parties in whose favor it is entered and will be considered prior to any claims of the owner of the defendant property against which it is entered, as to the remnants and surpluses thereof, but does not establish the priority over, or ranking among, non-possessory lien claimants. Ranking in priority may subsequently be established on the motion of any party. (Effective December 1, 2010; Amended effective December 1, 2015.)

Rule D. Possessory, petitiory and partition actions.

In possessory actions filed under Supplemental Rule (D), process should issue as provided by L.A.R. A(8), B(3)(c), and C(2)(c). Notice requirements must follow L.A.R. A(9), B(4) and C(4). Likewise, a plaintiff may demonstrate exigent circumstances under L.A.R. B(3)(b) by an affidavit setting out that the vessel or other property is in danger of being lost, taken from the jurisdiction of the court, or that other good cause exists for granting expedited proceedings.

A plaintiff who obtains a summons on the basis of exigent circumstances will also be subject to the provisions of L.A.R. C(2)(b) and C(7). (Effective December 1, 2010.)

Editor's Note — The word "petitiory" in the rule's catchline should probably be "petitory." The rule is set out above as it appears on the court's website.

Rule E. Actions in rem and quasi in rem; general provisions.

(1) *Statement of Damages and Expenses Required.* Every complaint filed in a Supplemental Rule (B) and (C) action must state the known amount of the debt, damages, or salvage for which the action is brought, or in the case of a Rule (D) action, the precise nature of the plaintiff's interest and the percentage of the interest claimed. In addition, the complaint should also specify the amount of any unliquidated claims, including attorney's fees and expenses, as well as the legal basis upon which the plaintiff seeks the unliquidated damages, including the right to recover attorney's fees and expenses.

(2) *Advance Arrangements for Substitute Custodian.* Plaintiffs are admonished to make every reasonable advance effort to secure a substitute custodian and to coordinate issues concerning the appointment of a substitute custodian with the United States Marshal, and to arrange for advance compliance with L.A.R. A(5), whenever practical, before filing any complaint which seeks the issuance of warrant for arrest or execution by the United States Marshal.

(3) *Requirements and Procedures for Effecting Intervention.* Whenever a vessel or other property is arrested or attached under a Supplemental Rule, and the vessel or property is in the custody of the United States Marshal or duly authorized substitute custodian, any person with a claim against the vessel or property must present the claim as provided in this rule:

(a) *Intervention of Right When No Sale of the Vessel or Property is Pending, and Where Security Has Not Been Posted but the Vessel is Released.* Except as limited by L.A.R. E(3)(b), any person with a claim against a vessel or property which has been arrested or attached may, as a matter of right, file an intervening complaint at any time before entry of an order scheduling the vessel or property for sale. The intervening party must also prepare and submit to the clerk a supplemental warrant for arrest or a supplemental process of attachment and garnishment.

The clerk will file the intervening complaint and issue the supplemental process. The intervening party must deliver a copy of the intervening complaint and the original of the supplemental process to the United States Marshal, who will re-arrest or re-attach the vessel or property in the name of the intervening plaintiff. If the United States Marshal has on deposit sufficient funds to maintain the previous seizure, the intervening plaintiff need not post additional funds. However, any party may subsequently move to pro-rate the costs of maintaining the seizure among all of the intervening plaintiffs, as provided in Subsection 5 of this rule.

(b) *Permissive Intervention When the Vessel or Property Has Been Scheduled for Sale by the Court.* Except as indicated below and subject to any other rule or order of this court, no person has an automatic right to intervene in an action once the court has ordered the sale of the vessel or property, and the sale is scheduled to occur within fifteen (15) days from the date the party moves for permission to intervene under this subsection. In such cases, the person seeking permission to intervene must:

(i) File a motion to intervene and indicate in the caption of the motion a request for expedited hearing when appropriate;

(ii) Include a copy of the proposed intervening complaint as an exhibit to the motion to intervene;

(iii) Submit a supplemental warrant for arrest or a supplemental process of attachment and garnishment;

(iv) Serve copies of the motion to intervene, with exhibits and proposed supplemental process, upon every other party to the litigation;

(v) Indicate in the motion to intervene whether the intervening party is seeking to delay the sale of the vessel and, if so, the justification for doing so; and

(vi) File a certificate of service indicating the date and manner of service of the motion and accompanying documents.

The court may permit intervention under terms which it deems equitable to the interests of all parties. If the court permits intervention it will direct the clerk to issue the supplemental process.

The clerk will enter the order, file the original intervening complaint and issue the supplemental process with a copy of the intervening complaint.

The intervening party must deliver a copy of the intervening complaint and the original of the supplemental process to the United States Marshal, who will re-arrest or re-attach the vessel or property in the name of the intervening plaintiff.

Counsel for the intervening party must also serve a copy of the intervening complaint, exhibits, and supplemental process upon every other party of record and file a Certificate of Service indicating the manner and date of service.

(4) *Special Requirements for Salvage Actions.* In cases of salvage, the complaint must also state to the extent known the value of the hull, cargo, freight, and other property salvaged, the amount claimed, the names of the principal salvors, and whether the suit is instituted on their behalf and on behalf of all other persons associated with them.

Plaintiff must also attach as exhibits to the complaint a list of all known salvors and persons believed entitled to share in the salvage, including any crewmembers who are not parties to the complaint, and a copy of any salvage agreement or other contract previously entered into by the plaintiff in connection with the actions that are being shown as the basis for entitlement to a salvage award.

(5) *Deposit of United States Marshal's Fees and Expenses Required Before Effecting Arrest, Attachment or Garnishment.*

(a) *Deposit Required Before Seizure.* Any party seeking the arrest of a vessel or attachment of property under Supplemental Rule (E) must deposit a sum with the United States Marshal sufficient to cover the United States Marshal's or substituted custodian's estimated fees and expenses of arresting and keeping the property for at least ten (10) days. The United States Marshal is not required to execute process until the deposit is made.

(b) *Proration of United States Marshal's or Substitute Custodian's Fees and Expenses upon Intervention.* When one or more parties intervene under L.A.R. E(3)(a) or (b), the burden of advancing sums to the United States Marshal or substituted custodian sufficient to cover the United States Marshal's or substituted custodian's fees and expenses will be allocated equitably between the original plaintiff and the intervening party or parties as indicated below:

(i) *Stipulation for the Allocation and Payment of the United States Marshal's or Substituted Custodian's Fees and Expenses.* Immediately upon the filing of an intervening complaint, counsel for the intervening plaintiff must arrange for a conference between all other parties to the action, at which time the parties must make a good faith effort to allocate fees and expenses among the parties. Any resulting stipulation must be filed with the court and a copy served upon the United States Marshal.

(ii) *Allocation of Costs and Expenses in the Event that Parties Cannot Stipulate.* The court expects counsel to resolve the allocation of costs and expenses in accordance with the preceding paragraph, but if an arrangement cannot be made, the parties will share in the fees and expenses of the United States Marshal or substitute custodian in proportion to their claims as stated in the original and intervening complaints.

To determine each party's proportionate share, counsel for the last intervening plaintiff must determine the total amount claimed by each party from the original or amended complaint and all other intervening complaints filed in accordance with L.A.R. E(3)(a) or (b), then deliver to the United States Marshal a list which summarizes each party's claim and the proportion which each party's claim bears to the aggregate claims asserted in the litigation, determined to the nearest one-tenth of one percent. The United States Marshal will then determine the total expenses incurred to date and estimate the expenses to be incurred during the next fourteen days. For the purpose of making this calculation, the total fees and expenses must be calculated from the date when continuous and uninterrupted arrest or attachment of the property began and not from the date a particular party's intervening complaint was filed.

The United States Marshal will then apply the percentage determined in the listing compute the amount of each intervening party's initial deposit requirements. The United States Marshal will use this percentage to compute any additional deposit requirements which may be necessary under L.A.R. E(5)(c).

After the United States Marshal determines of each party's percentage share of the deposit requirements, the intervening party must either post his deposit with the United States Marshal or substitute custodian or move to set aside that requirement. If the intervenor fails to comply with this requirement within two days, the intervenor's attachment will be vacated.

(c) *Additional deposit requirements.* Until the property arrested or attached and garnished has been released or otherwise disposed of in accordance with Supplemental Rule (E), the United States Marshal may require from any party who has caused the arrest or attachment and garnishment to post additional deposits which the United States Marshal determines necessary to cover any additional estimated fees or expenses.

(d) *Judicial Relief from Deposit Requirements.* Any party who contends that the deposit requirements of this rule impose a burden disproportionate to the aggrieved party's potential recovery in light of the relative priorities of the claims asserted against the vessel or other property may apply to the court for relief.

Although the judicial officer may adjust the deposit requirements upon motion, the proportion required of an aggrieved party may not be reduced to a percentage less than that imposed upon the claimant whose claim is the smallest among that of claims which the movant stipulates have priority over its claim or, in the absence of a stipulation, the greatest percentage imposed upon any claimant participating in the deposit requirements.

(e) *Failure to Comply with Additional Deposit Requirements.* Any party who fails to make the additional deposit requested by the United States Marshal may not participate further in the proceeding, except to seek relief from this rule. The United States Marshal will notify the court in writing whenever any party fails to make additional deposits as required by L.A.R. E(5)(c).

If a party questions its obligations to advance monies required by this rule, the United States Marshal may apply to the court for instructions concerning that party's obligation.

(6) *Property in Possession of a United States Officer.* Whenever the property to be arrested or attached is in custody of a United States officer, the United States Marshal must serve the appropriate process either upon the officer or employee or, if the officer or employee is not found within the district, then, the custodian of the property within the district.

The United States Marshal must direct the officer, employee or custodian not to relinquish custody of the property until further order of the court.

(7) *Process held in abeyance.*

(a) *When permitted.* If a plaintiff asks the clerk to hold issuance of process in abeyance under Supplemental Rule (E)(4)(b), the clerk will docket the request and will not be responsible for ensuring that process is issued at a later date.

(b) *When intervention is subsequently required.* It is the intention of these rules that a vessel or other property should be arrested or attached by process issued and effected in only one civil action. Therefore, if while process is held in abeyance on one action, the vessel or property is arrested or attached in another action, the plaintiff who originally requested process be held in abeyance in the first action should voluntarily dismiss, without prejudice, the first action, (insofar as that action seeks to proceed against the property arrested or attached in the second action) and promptly intervene in the second action under L.A.R. E(3)(a) or (b).

Motions to consolidate in rem actions against the same vessel or property will be granted only in exceptional circumstances to prevent undue hardship or manifest injustice.

(8) *Release of Property Under Supplemental Rule (E)(6).*

(a) *Release by Consent or Stipulation.* Release under Supplemental Rule (E)(6) must be secured by cash, cashier's check, or money order, a surety bond issued by an underwriter licensed to issue such bonds in the State of Mississippi, or a Letter of Undertaking submitted on behalf of the parties' underwriter which is approved by order of the court. The authorizing instrument must be signed by the party on whose behalf the property is detained or the party's attorney and the attorney-in-fact for a licensed surety. See Admiralty Form Nos. 9, 12, 13 and 14 forth on the courts' Websites.

The party seeking release must also submit a proposed order substantially conforming to Admiralty Form No. 16 on the courts' Websites.

Unless otherwise agreed by all parties and approved by court order, the stipulation, bond, or other security must be posted in an amount equal to, or greater than, the amount required for the following types of action:

(i) *Actions Entirely for a Sum Certain.* Actions for a sum certain may be secured by cash, a cashier's check or money order in the amount claimed in the complaint, with interest at six percent (6%) per annum from the date claimed to be due to a date twenty-four (24) months after the date the claim was filed, or by filing an approved stipulation or bond for the amount alleged plus interest as computed in this subsection.

The stipulation or bond must be conditioned to abide by all orders of the court, and to pay the amount of any final judgment, with interest.

(ii) *Actions Other Than Possessory, Petitory or Partition.* Unless otherwise ordered by the court, these actions must be secured by the amount of the appraised or agreed value of the property seized, with interest. If the parties cannot agree upon an appraised value, the court will order an appraisal.

The stipulation or bond must be conditioned to abide by all orders of the court, and to pay the amount of any final judgment, with interest.

The person who consents or stipulates to the release must also file a claim in accordance with L.A.R. E(3)(a) or (b).

(iii) *Possessory, Petitory or Partition Actions.* The United States Marshal may release property in these actions only upon court order and upon the subsequent deposit of security and compliance with the terms or conditions that the court deems appropriate.

(b) *Upon the Dismissal or Discontinuance of an Action.* If the complaint is dismissed or discontinued by court order, a plaintiff must coordinate with the United States Marshal to ensure that all costs and charges of the court and its officers have first been paid.

(c) *Release After the Posting of a General Bond.*

(i) *Requirements of a General Bond.* General Bonds under Supplemental Rule (E)(6)(b) must identify the vessel by name, nationality, dimensions, official number or registration number, hailing port and port of documentation.

(ii) *Responsibility for Maintaining a Current Listing of General Bonds.* The clerk will maintain a current listing of all general bonds in alphabetical order by name of the vessel. The listing will be available for inspection during normal business hours.

(iii) *Execution of process.* Although the subsequent arrest of a vessel for which a general bond already has been posted will be stayed under Supplemental Rule (E)(5)(b), the United States Marshal must still serve a copy of the complaint upon the master or other person in whose charge or custody the vessel is found. If neither the master nor another person in charge of custody is found aboard the vessel, the United States Marshal should make the return accordingly.

Plaintiff must promptly advise the owner or designated agent, at the address furnished in the general bond, of (1) the case number, (2) nature of the action and amount claimed; (3) the plaintiff and name and address of plaintiff's attorney; and (4) the return date for the filing of a claim of owner.

(9) *Application to Modify Security for Value and Interest.* At any time, any party who claims an interest in the subject matter of the action may file an application to increase or decrease the security, and any order granting the application may be enforced by attachment or as otherwise provided by law. Supplemental Rule F(7) establishes the procedure to increase the security.

(10) *Custody and safekeeping.*

(a) *Initial Responsibility.* The United States Marshal will initially take custody of any vessel, cargo or other property arrested or attached in accordance with these rules. Thereafter, and until a substitute custodian is authorized in accordance with L.A.R. E(10)(c), the United States Marshal is responsible for providing adequate and necessary security for the safekeeping of the vessel or property. In the discretion of the United States Marshal, adequate and necessary security may include the placing of keepers on or near the vessel or the appointment of a facility or person to serve as a custodian of the vessel or property. Absent exceptional circumstances, the plaintiff should have a substitute custodian appointed by the court at the time of filing the complaint as set forth in L.A.R. E(2).

(b) *Limitations on the Handling, Repairing and Subsequent Movement of Vessels or Property.* After the arrest or attachment of a vessel or property on a vessel, and except as provided in L.A.R. E(10)(a), no person may handle cargo, conduct repairs, or move a vessel without prior order of court. The custodian or substitute custodian must, however, comply with any orders issued by the Captain of the Port, United States Coast Guard, including an order to move the vessel, and must comply with any applicable federal, state, or local laws or regulations pertaining to vessel and port safety, but must not remove the vessel from the District and must report the vessel's movement to the court within twenty-four (24) hours of the movement.

(c) *Procedures for Changing Custody Arrangements.* Any party may apply to the court to dispense with keepers, remove or place the vessel, or other property seized on or about the vessel at a specified facility, designate a substitute custodian for the property, or for other similar relief. The application must substantially conform to Admiralty Form No. 17 on the courts' Websites.

(i) *Notification of the United States Marshal Required.* When an application for change in custody arrangements is filed, either before or after the United States Marshal has taken custody of the vessel or property, the filing party must serve notice of the application on the United States Marshal in sufficient time to permit the United States Marshal to review the indemnification and insurance arrangements proposed by the applicant and substitute custodian. The application must also be served upon all other parties to the litigation.

(ii) *Indemnification requirements.* An application for the appointment of a substitute custodian or facility must include as an exhibit to the motion, a consent and indemnification agreement signed by both the applicant or the applicant's attorney and the proposed substitute custodian. The application must substantially conform to Admiralty Form No. 17 on the courts' Websites.

The consent and indemnification agreement must expressly release the United States Marshal from any and all liability and responsibility for the care and custody of the property while in the hands of the substitute custodian and must expressly hold the United States Marshal harmless from all claims arising from the substitute custodianship. See Admiralty Form No. 18 on the courts' Websites.

(iii) *Court Approval Required.* The application to change custody arrangements and indemnification and consent agreement must be submitted to a judicial officer who will determine whether the facility or substitute custodian is capable of safely keeping the seized property. The proposed order granting the application should substantially conform to Admiralty Form No. 19 on the courts' Websites.

(d) *Insurance requirements.* At the time of the arrest or attachment of a vessel or property, the United States Marshal will obtain insurance to protect itself and its custodians from liability arising from the arrest, attachment or custody. The cost of the insurance will be paid by the plaintiff from the funds posted with the Marshal before the seizure, until otherwise taxed as cost. The insurance may be discontinued upon court approval of a consent custodian under L.A.R. A(5).

(11) *Preservation, Humanitarian and Repatriation Expenses.*

(a) *Limitations on Reimbursement for Services or Supplies Provided to a Vessel or Property in Custody.* Except in cases of emergency or undue hardship, no person may claim as an expense of administration the costs of services or supplies furnished to a vessel, seized property unless the services or supplies have been furnished to the United States Marshal or substitute custodian upon order of this court or of the United States Marshal

Any order issued under this subsection should require the person furnishing the services or supplies to file a weekly invoice.

(b) *Preservation Expenses for the Vessel or Property under Seizure.* The United States Marshal or substitute custodian is authorized to incur expenses reasonably deemed necessary to prevent loss or undue deterioration of the vessel, or other property while in custody.

(c) *Expenses for Care and Maintenance of a Crew.* Except in an emergency or upon the authorization of a judicial officer, neither the United States Marshal nor substitute custodian may incur expenses for feeding or otherwise maintaining the crew.

Emergency applications for providing food, water and necessary medical services for the maintenance of the crew may be submitted and decided ex parte. Thereafter, any party may bring a motion to challenge or modify the court's order, and, unless otherwise provided, the expenses will be taxed as a cost of administration and not as an expense of custody

(d) *Repatriation Expenses.* Absent an order of court expressly ordering the repatriation of the crew or passengers and directing that the expenses be taxed as a cost of administration, no person will be entitled to claim these expenses as expenses of administration.

(e) *Claim by a Supplier for Payment of Charges.* Any person who claims payment for furnishing services or supplies in compliance with L.A.R. E(11) must submit an invoice to the United States Marshal's office for review and approval before the vessel is released.

The United States Marshal will review the claim, make adjustments or recommendations to the claim as are appropriate and forward the claim to the court for approval. The court may postpone the hearing on an individual claim until a hearing can be set to consolidate other claims against the property.

(12) *Property in Incidental Custody and Otherwise not Subject to the Arrest or Attachment.*

(a) *Authority to Preserve Cargo in Incidental Custody.* The United States Marshal or an authorized substitute custodian is responsible for securing, maintaining and preserving all property incidentally taken into custody as a result of the arrest or attachment of a vessel or property. Incidental property may include but is not limited to laden cargo not itself the subject of the arrest or attachment.

The United States Marshal or substitute custodian must maintain a separate account of all costs and expenses associated with the care and maintenance of property incidentally taken into custody.

Any person claiming entitlement to possession of property incidentally taken into custody must, as a precondition of receiving possession, reimburse the

United States Marshal or substitute custodian for such separately accounted expenses, reserving a right to seek payment of said expenses from any other party.

(b) *Separation, Storage and United States Preservation of Property in Incidental Custody.* Any party, the United States Marshal, or substitute custodian may petition the court to permit the separation and storage of property in incidental custody from the property actually arrested or attached.

If the court orders separation of the incidentally seized property to protect it from undue deterioration, to provide for safer storage, to meet an emergency, to reduce the expenses of custody or to facilitate a sale of the vessel or other property under L.A.R. E(17), the costs of that separation will be treated as an expense of preservation and taxed as a cost of custody.

(c) *Disposal of Unclaimed Property.* Property incidentally in custody and not subsequently claimed by any person entitled to possession will be disposed of in accordance with the laws governing the disposition of property abandoned to the United States of America.

Except when prohibited by federal statute, the resulting net proceeds associated with the disposition of abandoned property will be applied to offset the expense of administration with the remainder escheating to the United States of America as provided by law.

(13) *Dismissal.*

(a) *By consent.* An action may not be dismissed under Fed.R.Civ.P. 41(a) unless all costs and expenses of the court and its officials have been paid. In the case of multiple plaintiffs or an intervening plaintiff(s), the plaintiff or intervening plaintiff may not dismiss its claims unless it has paid its proportionate share of costs and expenses in accordance with L.A.R. E(8).

(b) *Involuntary dismissal.* An order of dismissal under Fed.R.Civ.P.41(b) should also designate the costs and expenses to be paid by the party or parties so dismissed.

(14) *Judgments.*

(a) *Expenses of Sureties as Costs.* If costs are awarded to any party, then all reasonable insurance premiums or expenses previously paid by the prevailing party on bonds, stipulations or other security may be taxed as costs in the case.

(b) *Costs of arrest or attachment.* If costs are awarded to any party, then all reasonable expenses paid by the prevailing party incidental to or arising from the arrest or attachment of any vessel, property or cargo may be taxed as costs in the case.

(15) *Stay of final order.*

(a) *Automatic stay for fourteen days.* In accordance with Fed.R.Civ.P. 62(a), a party may not execute upon a judgment, and seized property may not be released until fourteen days after the entry of the judgment or order of dismissal.

(b) *Stays beyond the 14-day period.* If within the 14-day period established by Fed.R.Civ.P. 62(a) a party files either a motion contemplated in Fed.R.Civ.P. 62(b) or a notice of appeal, then unless otherwise ordered by the court, the stay will be extended for a period not to exceed thirty days from the date of the filing of the motion or notice of appeal to permit the court to consider an application for the establishment of a supersedeas bond, and when this bond must be filed with the court.

(16) *Notice of sale.*

(a) *Publication of notice.* In an action in rem or quasi in rem, and except in suits filed on behalf of the United States of America where notice is prescribed by statute, the United States Marshal must publish notice in any of the newspapers approved under L.A.R. Rule A(9).

(b) *Duration of publication.* Unless otherwise ordered by the court, applicable Supplemental Rule, or Local Admiralty Rule, publication of the notice of sale must be made at least twice; the first publication must be at least one (1) calendar week before the date of the sale, and the second at least three calendar days before the date of the sale.

(17) *Sale of a vessel or property.*

(a) *Payment of the purchase price.* Unless otherwise provided in the order of sale, the person whose bid is accepted must pay the United States Marshal the purchase price in the manner provided below:

(i) *If the Bid is Not More Than $500.00.* The successful bidder must immediately pay the full purchase price.

(ii) *If the Bid is More than $500.00.* The bidder must immediately deposit with the United States Marshal $500.00, or 10% of the bid, whichever sum is greater, and must pay the remaining purchase price within three days.

If an objection to the sale is filed within the time permitted by L.A.R. Rule E(17)(g), the successful bidder need not pay the remaining purchase price until three days after the court confirms the sale.

(b) *Method of payment.* Unless otherwise ordered by the court, payments to the United States Marshal must be made in cash, certified check or cashier's check.

(c) *Custodial Costs Pending Payment.* When a successful bidder fails to pay the balance of the bid within the time allowed by L.A.R. E(17)(a)(2) or within the time permitted by court order, the United States Marshal will charge the successful bidder for the cost of keeping the property from the date payment of the balance was due to the date the bidder takes delivery of the property.

The United States Marshal may refuse to release the property until these additional charges have been paid.

(d) *Default for Failure to Pay the Balance.* A person who fails to pay the balance of the bid within the time allowed will be deemed to be in default, and a judicial officer may then either order that the sale be awarded to the second highest bidder or may order a new sale, as appropriate.

Any sum deposited by the bidder in default will be forfeited and applied by the United States Marshal to any additional costs incurred because of the forfeiture and default, including costs incident to resale. The balance of the deposit, if any, will be retained in the registry and subject to further order of the court.

(e) *United States Marshal's Report of Sale.* At the conclusion of the sale, the United States Marshal must file a written report of the sale to include the date of the sale, the price obtained, and the name and address of the buyer.

(f) *Confirmation of sale.* Unless an objection is timely filed in accordance with this rule, or the bidder is in default for failing to pay the balance of the purchase price, plaintiff must have the sale confirmed on the day following the last day for filing objections.

To confirm the sale, plaintiff's counsel must file a "Request for Confirmation of Sale" on the day following the last day for filing an objection. The "Request for Confirmation of Sale" must substantially conform to Admiralty Form No. 20 on the courts' Websites. Plaintiff's counsel must also prepare and offer for filing a "Confirmation of the Sale." The "Confirmation of the Sale" must substantially conform to Admiralty Form No. 21 on the courts' Websites. The clerk will file and docket the confirmation and promptly transmit a certified copy of the "Confirmation of Sale" to the United States Marshal's office.

Unless otherwise ordered by the court, if the plaintiff fails timely to file the "Request for Confirmation of Sale" and proposed "Confirmation of Sale," the United States Marshal will assess any continuing costs or expenses for custody of the vessel or property against the plaintiff.

(g) *Objections to confirmation.*

(i) *Time for filing objections.* Unless otherwise permitted by the court, an objection must be filed within seven days following the sale. The person who objects must serve a copy of the objection upon the United States Marshal and all other parties to the action, along with a Certificate of Service indicating the date and manner of service. Opposition to the objection must be filed within seven days after receipt of the objection to the sale.

The court will consider the objection and any opposition to the objection and confirm the sale, order a new sale, or grant other relief as appropriate.

(ii) *Deposition of Preservation or Maintenance Costs.* Any person who objects to the sale must also deposit with the United States Marshal the cost of keeping the property for at least seven days. Proof of the deposit with the United States Marshal's office must be delivered to the clerk's office for filing. The court will not consider the objection without proof of this deposit.

If the objection is sustained, the objector will be reimbursed for the expense of keeping the property from the proceeds of any subsequent sale, and any remaining deposit will be returned to the objector upon court order.

If the objection is denied, the sum deposited by the objector will be applied to pay the fees and expenses incurred by the United States Marshal in keeping the property from the date the objection was filed until the sale is confirmed. Any remaining deposit will be returned to the objector upon court order.

(h) *Confirmation of Title.* Any claim of failure of a party to give the required notice of an action to arrest of a vessel, or other property or, or failure to give required notice of a sale may afford grounds for objecting to the sale, but does not affect the title of a good faith purchaser.

(18) *Post-sale Claim.* Except for seamen's wages, unless otherwise ordered by the court, any claims filed after the date of the sale will be limited to the remnants and surplus, if any, arising from the sale, will not be admitted on behalf of lienors who file their claims after the sale. (Effective December 1, 2010.)

Rule F. Actions to Limit Liability.

(1) *Security.* Upon filing a complaint, the plaintiff must deposit with the court a sum equal to the amount or value of the plaintiff's interest in the vessel and pending freight, if any (see Admiralty Form No. 22 on the court's website), or approved security for that amount such as a Letter of Undertaking or an Ad Interim Stipulation for Value which substantially conforms to Admiralty Form No. 23 on the courts' Websites.

(2) *Submission of proposed order and enjoining of suits.* After the plaintiff complies with Supplemental Rule F(1), plaintiff may move for an injunction against further prosecution of all claims against the plaintiff or the plaintiff's property. The plaintiff must submit with the motion a proposed order that substantially conforms to Admiralty Form No. 24 on the courts' Websites.

(3) *Publication of the Notice.* After entry of an Order Approving Ad Interim Stipulation for and Enjoining Suits, plaintiff must ask the clerk to issue the notice contemplated by Supplemental Rule (F)(4), to be published as required by that Rule. Plaintiff must use diligence to make publication in a manner reasonably calculated to give notice to all known or reasonably anticipated claimants. (See Admiralty Form No. 25 on the courts' Websites.)

(4) *Proof of publication.* Plaintiff may make proof of publication by filing a sworn statement by or on behalf of the publisher or editor indicating the dates of publication, along with a copy of the actual publication. (Effective December 1, 2010.)

Rule G. Forfeiture actions in rem.

(1) *Scope.* This rule applies to all civil forfeiture in rem actions arising from a federal statute. To the extent that this rule does not address an issue, Local Admiralty Rules C and E apply. If neither this rule nor L.A.R. C or E address an issue, then Supplemental Rule G applies.

(2) *Verification of the complaint.* A complaint filed in any civil forfeiture action in rem action arising from a federal statute must be verified by affirmation of a person having knowledge, firsthand or otherwise, of the facts alleged in the complaint.

(3) *Forfeiture of real property.*

(a) If the defendant in an in rem civil forfeiture action is real property, the government must proceed in accordance with 18 U.S.C. § 985.

(b) After a complaint is filed, and on the request of the government, a judicial officer will issue a writ of entry to allow inspection and inventory of the property.

(c) If the court issues a seizure warrant for real property before the entry of an order of forfeiture under 18 U.S.C. § 985(d)(1)(B)(ii), it will conduct a prompt post-seizure hearing during which the property owner may contest the basis for the seizure.

(4) *Forfeiture of other property. Arrest warrant in rem.*

(a) If property other than real property is already in the possession, custody, or control of the government when the complaint for forfeiture is filed, the clerk of the court will issue a warrant to arrest the property.

(b) If property other than real property is not already in the possession, custody, or control of the government, upon a finding of probable cause by a judicial officer, the court will issue a warrant to arrest the property.

(c) A warrant is not necessary if the property is already subject to a judicial restraining order.

(5) *Notice.*

(a) *Generally.* The plaintiff must provide notice of any civil forfeiture action in rem in accordance with Supplemental Rule G(4). The government may publish notice on an official government forfeiture website for at least thirty consecutive days.

(b) *Known potential claimants.* The government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant.

(c) *Property valued at less than $1,000.00.* Publication is not required as long as direct notice is sent to all known potential claimants under Supplemental Rule G(4)(b).

(6) *Responsive pleadings.*

(a) *Strict compliance required.* All claims and answers must be filed within the filing deadlines established by Supplemental Rule G(5), unless the court, for good cause, grants an extension of time to file a claim or answer before the expiration of those deadlines.

(b) *Excuse.* Failure to file a timely claim or answer will not prevent a claimant from petitioning the court to excuse the failure to strictly comply with Supplemental Rule G(5).

(c) *Claim form.* A claim form should substantially conform to Admiralty Form 27 on the courts' Websites.

(7) *Special interrogatories.* The number of Special Interrogatories propounded under Rule G(6) will not count toward the limits imposed on interrogatories under Fed.R.Civ.P. 33 or L.U.Civ.R. 26.

(8) *Default; Default judgment.*

(a) *Entry of default.* TThe government may, under Fed. R. Civ. P. 55(a), seek the entry of a default against any person or entity that has failed to plead or otherwise defend against any civil forfeiture action in rem commenced by the government. Any request for entry of a default must be accompanied by proof of publication of notice and proof of all direct notices sent to known potential claimants.

(b) *Default judgment; complete or partial.* Not later than thirty days after entry of default, the government must file a motion for entry of a default judgment. The government may request entry of either a complete default judgment or a default judgment against all persons or entities that have failed to file a timely claim and answer within the time stated in any direct or published notice.

(9) *Taxation of costs.* Costs awarded to a claimant are limited to those costs authorized by 28 U.S.C. § 2465. (Effective December 1, 2010.)

APPENDIX A. OFFICIAL FORMS

OFFICIAL FORMS

Form 1. Case Management Order.

THIS FORM WILL APPEAR ON THE WEBSITE IN A FILLABLE PDF FORMAT

UNITED STATES DISTRICT COURT
____________________ DISTRICT OF MISSISSIPPI

(CHOOSE DIVISION)

Enter Plaintiffs(s) here:

Civil Action No.

Enter Defendant(s) here:

Case Management Order

This Order, including all deadlines, has been established with the participation of all parties and can be modified only by order of the Court on a showing of good cause supported with affidavits, other evidentiary materials, or reference to portions of the record.
IT IS HEREBY ORDERED:
1. ESTIMATED DAYS OF TRIAL: ________
ESTIMATED TOTAL NUMBER OF WITNESSES: ________
EXPERT TESTIMONY EXPECTED: Yes/No NO. OF EXPERTS: ____
Enter explanation (if necessary) here.

2. Alternative Dispute Resolution [ADR]. (Pick one)
(Alternative dispute resolution techniques appear helpful and will be used in this civil action as follows:)
(At the time this Case Management Order is offered it does not appear that alternative dispute resolution techniques will be used in this civil action.)
3. Consent to Trial by United States Magistrate Judge. (Pick one)
(The parties consent to trial by a United States Magistrate Judge.)
(The parties do not consent to trial by a United States Magistrate Judge.)
4. Disclosure. (Pick one)
(The following additional disclosure is needed and is hereby ordered:)
(The pre-discovery disclosure requirements of L.U.CIV. R. 26(a)(1) have been complied with fully.)
5. Motions; Issue Bifurcation. (Pick one)
(Staged resolution, or bifurcation of the trial issues will assist in the prompt resolution of this action. Accordingly, the Court orders that:)

(Staged resolution/bifurcation of the trial issues will not assist in the prompt resolution of this action.)
(Pick one)
(Early filing of the following motion(s) might significantly affect the scope of discovery or otherwise expedite the resolution of this action:)
(Statement not applicable.)

6. Discovery Provisions and Limitations.

A. Interrogatories are limited to ____ succinct questions.
B. Requests for Production are limited to ____ succinct questions.
C. Requests for Admissions are limited to ____ succint questions.
D. Depositions are limited to the parties, experts, and no more than ____ fact witness depositions per party without additional approval of the Court.

E. The parties have complied with the requirements of L.U.CIV.R. 26(f)(2)(B) regarding discovery of electronically stored information and have concluded as follows:

F. The court imposes the following further discovery provisions or limitations:

____ 1. The parties have agreed that defendant may obtain a FED.R.CIV.P. 35 (L.U.CIV.R. 35) medical examination of the plaintiff (within subpoena range of the Court) by a physician who has not examined the plaintiff, and that defendant may arrange the examination without further order of the court. The examination must be completed in time to comply with expert designation discovery deadlines.

____ 2. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the attorney-client privilege and the work-product protections are not waived by any disclosure connected within this litigation pending before this Court. Further, the disclosures are not waived in any other federal or state proceeding.

____ 3. Plaintiff must execute an appropriate, HIPAA-compliant medical authorization.

____ 4. The court desires to avoid the necessity of filing written discovery motions where court participation in an informal discussion of the issue might resolve it, even after the parties have been unsuccessful in a good faith attempt to do so. Consequently, before a party may serve any discovery motion, counsel must first confer in good faith as required by F.R. Civ. P. 37(a)(1). If the attorney conference does not resolve the dispute, counsel must contact the chambers of the magistrate judge to request a telephonic conference to discuss the issue as contemplated by F.R. Civ.P. 16(b)(3)(B)(v). Only if the telephonic conference with the judge is unsuccessful in resolving the issue may a party file a discovery motion.

____ 5. Other:

Additional Provisions:

7. Scheduling Deadlines

____ A. Trial. This action is set for Choose Type:
beginning on: ____________________, at , 9:00 a.m., in (Choose city) , Mississippi, before United States (District ____________) Judge ________________ .

ANY CONFLICTS WITH THIS TRIAL DATE MUST BE SUBMITTED IN WRITING TO THE TRIAL JUDGE IMMEDIATELY UPON RECEIPT OF THIS CASE MANAGEMENT ORDER.

____ B. Pretrial. The pretrial conference is set on: ____________, at ____________ 9:00 a.m., in (choose city) Mississippi, before United States District ____________ Judge ________________.

____ C. Discovery. All discovery must be completed by: ________________.

____ D. Amendments. Motions for joinder of parties or amendments to the pleadings must be filed by: ________________.

____ E. Experts. The parties' experts must be designated by the following dates: ________________.

____ 1. Plaintiff(s): ________________.

____ 2. Defendant(s): ________________.

8. Motions. All dispositive motions and Daubert-type motions challenging another party's expert must be filed by ________________ . The deadline for motions in limine is fourteen days before the pretrial conference; the deadline for responses is seven days before the pretrial conference.

9. Settlement conference. (Pick one)
(No setting at this time.)

10. REPORT REGARDING ADR. On or before (7 days before FPTC) ________________, the parties must report to the undersigned all ADR efforts they have undertaken to comply with the Local Rules or provide sufficient facts to support a finding of just cause for failure to comply. See L.U.CIV.R. 83.7(f)(3).

So Ordered:

Date ____________ ________________________
Date United States Magistrate Judge

(Amended effective December 1, 2019.)

Form 2(a). Notice of Receipt of Original Deposition.

UNITED STATES DISTRICT COURT
________________ DISTRICT OF MISSISSIPPI

PLAINTIFF

v. Civil Action No.________

DEFENDANT

NOTICE OF RECEIPT OF ORIGINAL DEPOSITION

TO: All Counsel of Record

1. Pursuant to L.U.Civ.R. 5(d)(2), notice is hereby given that I have received, and will retain as the custodian thereof, the original of the following deposition:

Deponent: ______________________

Taken at the instance of: ______________________

2. Pursuant to L.U.Civ.R. 5(d)(2), a copy of the cover sheet accompanying this deposition is attached hereto as "Exhibit A."

______________________ ______________________

Date Signature

____

Typed Name & Bar Number

Attorney for ______________________

Form 2(b). Notice of Service of Interrogatories or Requests for Production of Documents or Responses Thereto.

UNITED STATES DISTRICT COURT
______________ DISTRICT OF MISSISSIPPI

PLAINTIFF

v. Civil Action No.________

DEFENDANT

NOTICE OF SERVICE OF INTERROGATORIES OR REQUESTS FOR PRODUCTION OF DOCUMENTS OR RESPONSES THERETO

TO: All Counsel of Record

Pursuant to L.U.Civ.R. 5(d)(3), notice is hereby given that on the date entered below I served the following discovery device(s):

(✓) (Check as appropriate:
( ) Interrogatories to: ______________________.
( ) Requests for Production of Documents to: ______________________.
( ) Requests for Admissions to: ______________________.
( ) Responses to Interrogatories of: ______________________.
( ) Responses to Requests for Production of Documents of: __________.
( ) Responses to Requests for Admission of: ______________________.

Pursuant to L.U.Civ.R. 5(d)(3), I acknowledge my responsibilities as the custodian of the original(s) of the document(s) identified above.

____________________ Date	____________________ Signature
	____________________ Typed Name & Bar Number

Form 2(c). Notice of Service of Pre-Discovery Disclosure Information.

UNITED STATES DISTRICT COURT
________________ DISTRICT OF MISSISSIPPI

PLAINTIFF

v. Civil Action No.________

DEFENDANT

**NOTICE OF SERVICE OF
PRE-DISCOVERY DISCLOSURE INFORMATION**

To: All Counsel of Record

Notice is hereby given that on the date entered below ____________________ disclosed to ____________________ the information required by L.U.Civ.R. 26(a).

____________________ Date	____________________ Signature
	____________________ Typed Name & Bar Number
	Attorney for: ________________

Form 2(d). Notice of Endorsement.

IN THE UNITED STATES DISTRICT COURT FOR THE
________________ SOUTHERN DISTRICT OF MISSISSIPPI
____________________ DIVISION

____________________,)
)
Plaintiff(s),)
)
v.) Case No. __________

)
________________,)
)
Defendant(s).)

NOTICE OF ENDORSEMENT

Pursuant to the ECF Administrative Procedures, I hereby certify that I endorse the inclusion of my signature on the following document [for example: stipulation of dismissal, or joint motion] which was filed electronically on ________________:

(Title of document)

____
Attorney for (Plaintiff or Defendant)
Address: ________________
____
____

Date: ________________

Form 2(e). Certificate of Service.

Certificate of Service

I hereby certify that on (Date) I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following: ________________ and I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants: ________________

s/________________

Form 2(f). Notice of conventional filing.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
________________ DIVISION

________________,)
)
Plaintiff(s),)
)
v.) Case No. ________________

)
________________,)

)
Defendant(s).)

NOTICE OF CONVENTIONAL FILING

☐ (Title of document here) is in paper form only and is being electronically filed under seal/r restriction by the Office of the Clerk pursuant to order filed on________________. This document has been manually served on all parties.

OR

☐ (Title of document here) cannot be filed electronically. This document has been manually served on all parties.

____
Attorney for (Plaintiff or Defendant)
Address: ______________________________
____
____

Date: ________________________

Form 3. Pretrial Order.

UNITED STATES DISTRICT COURT
________________ DISTRICT OF MISSISSIPPI

PLAINTIFF

v. Civil Action No.________

DEFENDANT

PRETRIAL ORDER

1. Choose [by a ✓ mark] one of the following paragraphs, as is appropriate to the action:

If a pretrial conference was held

A pretrial conference was held as follows:
Date: ________________ Time: ________________
United States Courthouse at: ________________ Mississippi,
before the following judicial officer: ________________

If the final pretrial conference was dispensed with by the court pursuant to L.U.Civ.R. 16(f)(2)

The final pretrial conference having been dispensed with by the judicial officer, the parties have conferred and agree upon the following terms of this pretrial order:

2. The following counsel appeared:

a. For the Plaintiff:

Name	Postal and Email Addresses	Telephone No.

b. For the Defendant:

Name	Postal and Email Addresses	Telephone No.

c. For Other Parties:

Name	Postal and Email Addresses	Telephone No.

3. The pleadings are amended to conform with this pretrial order.
4. The following claims (including claims stated in the complaint, counterclaims, cross-claims, third-party claims, etc., have been filed:
5. The basis for the court's jurisdiction is:
6. The following jurisdictional question(s) remain(s) [If none, enter "None"]:
7. The following motions remain pending [If none, enter "None"] [Note: Pending motions not noted here may be deemed moot]:
8. The parties accept the following **concise**summaries of the ultimate facts as claimed by:

a. Plaintiff:

b. Defendant:

c. Other

9. a. The following facts are established by the pleadings, by stipulation, or by admission:

b. The contested issues of fact are as follows:

c. The contested issues of law are as follows:

10. The following is a list and brief description of all exhibits (except exhibits to be used for impeachment purposes only) to be offered in evidence by the parties. **Each exhibit has been marked for identification and examined by counsel.**

a. To be Offered by the Plaintiff:

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified ground(s) for the objection(s):

b. To be Offered by the Defendant:

The authenticity and admissibility in evidence of the preceding exhibits are stipulated. If the authenticity or admissibility of any of the preceding exhibits is objected to, the exhibit must be identified below, together with a statement of the specified ground(s) for the objection(s):

11. The following is a list and brief description of charts, graphs, models, schematic diagrams, and similar objects which will be used in opening statements or closing statements, but which will **not be** offered in evidence:

Objections, if any, to use of the preceding objects are as follows:

If any other objects are to be used by any party, such objects will be submitted to opposing counsel at least three business days before trial. If there is then any objection to use of the objects, the dispute will be submitted to the court at least one business day before trial.

12. The following is a list of witnesses Plaintiff anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge before commencement of trial. The listing of a **Will Call** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

Name	Will/ May Call	[F]act/ [E]xpert [L]iability/ [D]amages	Business Address & Telephone Number

Will testify live:

Will testify by deposition:

State whether the entire deposition, or only portions, will be used. Counsel **must** confer, no later than twenty days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (videotaped or otherwise). All controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

13. The following is a list of witnesses Defendant anticipates calling at trial (excluding witnesses to be used solely for rebuttal or impeachment). All listed witnesses must be present to testify when called by a party unless specific arrangements have been made with the trial judge prior to commencement of

trial. The listing of a **Will Call** witness constitutes a professional representation, upon which opposing counsel may rely, that the witness will be present at trial, absent reasonable written notice to counsel to the contrary.

Name	Will/ May Call	Fact [E]xpert [L]iability/ [D]amages	Business Address & Telephone Number

Will testify live:

Will testify by deposition:

State whether the entire deposition, or only portions, will be used. Counsel **must** confer, no later than twenty days before the commencement of trial, to resolve **all** controversies concerning **all** depositions (videotaped or otherwise). All controversies not resolved by the parties shall be submitted to the trial judge not later than ten days prior to trial. All objections not submitted within that time are waived.

14. This (✓) ____ is ____ is not a jury case.

15. Counsel suggests the following additional matters to aid in the disposition of this civil action:

16. Counsel estimates the length of the trial will be ________ days.

17. As stated in paragraph 1, this pretrial order has been formulated (a) at a pretrial conference before the United States Magistrate Judge, notice of which was duly served on all parties, and at which the parties attended as is stated above, or (b) the final pretrial conference having been dispensed with by the magistrate judge, as a result of conferences between the parties. Reasonable opportunity has been afforded for corrections or additions prior to signing. This order will control the course of the trial, as provided by Rule 16, Federal Rules of Civil Procedure, and it may not be amended except by consent of the parties and the court, or by order of the court to prevent manifest injustice.

Ordered, this the ____ day of ________, 20____.

____

UNITED STATES DISTRICT JUDGE

____

Attorney for Plaintiff

____

Attorney for Defendant

Entry of the preceding Pretrial Order is recommended by me on this, the ________ day of ____________________, 20________.

____
UNITED STATES MAGISTRATE JUDGE

Form 4. Good Faith Certificate.

UNITED STATES DISTRICT COURT
________________ DISTRICT OF MISSISSIPPI

PLAINTIFF
v. Civil Action No.________
DEFENDANT

GOOD FAITH CERTIFICATE

All counsel certify that they have conferred in good faith to resolve the issues in question and that it is necessary to file the following motion:

Counsel further certify that:
✓ as appropriate:

________ 1. The motion is unopposed by all parties.
________ 2. The motion is unopposed by:
________ 3. The motion is opposed by:
________ 4. The parties agree that replies and rebuttals to the motion will be submitted to the magistrate judge in accordance with the time limitations stated in L.U.Civ.P. 7(b)(4).

This is the ______ day of ______________, 20______

____
Signature of Plaintiff's Attorney

____
Typed Name and Bar Number

____
Signature of Defendant's Attorney

____
Typed Name and Bar Number

(Amended effective December 1, 2010.)

Form 6. Application for Admission Pro Hac Vice.

UNITED STATES DISTRICT COURT
________________ DISTRICT OF MISSISSIPPI

PLAINTIFF

v. Civil Action No.________

DEFENDANT

APPLICATION FOR ADMISSION PRO HAC VICE

(A) Name: ____

Firm Name: ____

Office Address: ____

City: ________________ State ________ Zip ________

Telephone: ________________ Fax: ____________________

E-Mail: ____

(B) Client(s): ____

Address: ____

City: ________________ State ________ Zip ________

Telephone: ________________ Fax: ____________________

The following information is optional:

Has Applicant had a prior or continuing representation in other matters of one or more of the clients Applicant proposes to represent and is there a relationship between those other matter(s) and the proceeding for which Applicant seeks admission?

Does Applicant have any special experience, expertise, or other factor that Applicant believes makes it particularly desirable that Applicant be permitted to represent the client(s) Applicant proposes to represent in this case?

(C) Applicant is admitted to practice in the:

____ State of ______________
____ District of Columbia

and is currently in good standing with that Court. A certificate to that effect, issued within ninety days of the date of this Application, is enclosed; the physical address, telephone number and website/email address for that admitting Court are:

____

____

____

____

____

All other courts before which Applicant has been admitted to practice:

Jurisdiction Period of Admission

____

____

____

____

(D) Has Applicant been denied admission pro hac vice in this state? **Yes** ____ **No** ____

Has Applicant had admission pro hac vice revoked in this state? ____ ____

Has Applicant been formally disciplined or sanctioned by any court in this state in the last five years? ____ ____

If the answer was "yes," describe, as to each such proceeding, the nature of the allegations, the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings:

(E) Has any formal, written disciplinary proceeding ever been brought against Applicant by a disciplinary authority in any other jurisdiction within the last five years? **Yes** ____ **No** ____

If the answer was "yes," describe, as to each such proceeding, the nature of the allegations; the name of the person or authority bringing such proceedings; the date the proceedings were initiated and finally concluded; the style of the proceedings; and the findings made and actions taken in connection with those proceedings.

(F) Has Applicant been formally held in contempt or otherwise sanctioned by any court in a written order in the last five years for disobedience to its rules or orders? **Yes** ____ **No** ____

If the answer was "yes," describe, as to each such order, the nature of the allegations, the name of the court before which such proceedings were conducted; the date of the contempt order or sanction, the caption of the proceedings, and the substances of the court's rulings (a copy of the written order or transcript of the oral rulings must be attached to the application).

(G) Please identify each proceeding in which Applicant has filed an application to proceed pro hac vice in this state within the preceding two years, as follows:

Name and Address of Court	Date of Application	Outcome of Application
____________	__________	______
____________	__________	______
____________	__________	______

(H) Please identify each case in which Applicant has appeared as counsel pro hac vice in this state within the immediately preceding twelve months, is presently appearing as counsel pro hac vice, or has pending applications for admission to appear pro hac vice, as follows:

Name and Address of Court	Style of Case
________________	________________
________________	________________
________________	________________

	Yes	No
(I) Has Applicant read and become familiar with the LOCAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND SOUTHERN DISTRICT OF MISSISSIPPI?	____	____
Has Applicant read and become familiar with the MISSISSIPPI RULES OF PROFESSIONAL CONDUCT?	____	____

(J) Please provide the following information about the resident attorney who has been associated for this case:

Name and Bar No: ____________________

Firm Name: ____________________

Office Address: ____________________

City: ____________ State ____ Zip ____

Telephone: ____________ Fax: ____________

E-Mail: ____________________

(K) The undersigned resident attorney certifies that he/she agrees to the association with Applicant in this matter and to the appearance as attorney of record with Applicant.

____
Resident Attorney

I certify that the information provided in this Application is true and correct.

____
Date

____
Applicant's Handwritten Signature

Unless exempted by Local Rule 83.1(d)(5), the application fee established by this Court must be enclosed with this Application.

CERTIFICATE OF SERVICE

The undersigned Applicant certifies that a copy of this Application for Admission Pro Hac Vice has been mailed or otherwise served on this date on all parties who have appeared in this case.

This the ______ day of __________, 20______.

____
Resident Attorney (Amended effective December 1, 2010; amended effective December 1, 2016.)

Form 7. Report of Mediation.

IN THE UNITED STATES DISTRICT COURT
______________ DISTRICT OF MISSISSIPPI

PLAINTIFF

v. Civil Action No.______

DEFENDANT

REPORT OF MEDIATION

The parties in the above-styled and numbered cause engaged in mediation on the ____ day of ____________________, 20 ____. Counsel for the parties report that:

(✓ as appropriate)

____ 1. The parties reached a compromise settlement of all issues and a complete settlement was reached regarding all pending claims.

____ 2. The parties reached a compromise settlement of some issues and a partial settlement was reached regarding the following claims:

____

____

____ 3. The parties were unable to reach a settlement of any claims despite engaging in mediation.:

____ 4. The mediation progressed, but was not completed and has been recessed with further mediation to be conducted.

____ (a) On the ____ day of ____________________, 20 ____, or ____________________.

____ (b) Via telephone or other means of communication and the parties will advise the court of the result of those communications no later than the ____ day of ____________________, 20 ____ .

____ 5. The mediation failed to occur or was suspended because one or more of the parties refused to participate in the mediation.

This the ________ day of ____________________, 20____.

____
Plaintiff's Counsel

____
Defendant's Counsel

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UNIFORM LOCAL CRIMINAL RULES OF THE UNITED STATES DISTRICT COURTS FOR THE NORTHERN AND THE SOUTHERN DISTRICTS OF MISSISSIPPI

Effective April 30, 2013

Rule
1. Scope.
10.1. Deadlines in criminal cases.
17. Subpoenas.
32. Disclosure of initial sentence recommendation.
44.1. Attorneys: Admission and conduct.
47. Motions and supporting affidavits.
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RESEARCH REFERENCES

Practice References. Moore's Federal Rules Pamphlets 2000 Edition (Matthew Bender).

Bender's Federal Practice Manual (Matthew Bender).

Richard A. Givens, Manual of Federal Practice, 5th Ed. (Michie).

Federal Circuit and District Court Rules — 5th Circuit (CD Rom) (Matthew Bender).

Rule 1. Scope.

The rules of procedure in criminal proceedings in this court are those prescribed by the laws of the United States and the Federal Rules of Criminal Procedure, along with these Uniform Local Criminal Rules, and where applicable, by The Uniform Local Civil Rules of the United States District Courts for the Northern District and the Southern District of Mississippi. These rules shall be construed as consistent with acts of Congress and rules of practice and procedure prescribed by the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit. (Effective April 30, 2013.)

Rule 10.1. Deadlines in criminal cases.

At the arraignment, the United States Magistrate Judge shall enter a scheduling and discover order setting forth dates for the following:

(A) trial setting;

(B) discovery;

(C) filing of non-dispositive motions;

(D) notice to the government and to the court of intent to enter a guilty plea;

(E) filing of dispositive motions;

(F) filing of motions in limine; and

(G) submission of proposed jury instructions and exhibit lists to the court and opposing counsel. Supplemental or "specialty" instructions may be submitted to the court by the parties at the close of the evidence.

sUpon the request of any party, the United States Magistrate Judge may also enter an order setting dates for the parties to provide a summary of expert opinions pursuant to Fed. R. Crim. P. 16(a)(1)(G) and 16(b)(1)(C). (Effective April 30, 2013.)

Rule 17. Subpoenas.

A party seeking a subpoena for books, papers, documents, data or other objects under Fed. R. Crim. P. 17(c) returnable in advance of trial must seek prior approval from the magistrate judge assigned to the case. For good cause, an application for approval may be made ex parte. The court will address issues of notice, place of production, and whether the material must be disclosed to opposing parties upon consideration of the application. (Effective December 1, 2019.)

Rule 32. Disclosure of initial sentence recommendation.

As authorized by Federal Rule of Criminal Procedure 32(e)(3), the probation officer's recommendation on the initial sentence shall not be disclosed unless so ordered by the sentencing judge. (Effective April 30, 2013.)

Rule 44.1. Attorneys: Admission and conduct.

Admission and conduct of attorneys in criminal cases shall be governed by Rule 83.1 of *The Uniform Local Civil Rules of the Northern and Southern Districts of Mississippi,* which is adopted and incorporated by reference herein. However, the judge in any criminal proceeding may waive the requirement of local counsel or any limitation on the number of pro hac vice admissions. (Effective April 30, 2013.)

Rule 47. Motions and supporting affidavits.

(A) *Applicability.* This Rule governs a written communication with the court that is intended to be an application for relief or other action by the court. Such communications shall be presented by a motion in the form prescribed by this Rule. The provisions of this Rule apply to all written motions filed in criminal actions. Counsel are directed to the provisions of Fed. R. Crim. P. 12(b). When a deadline falls on a Saturday, Sunday or legal holiday, the deadline shall be the next business day.

Except as specified below, all motions must be accompanied by a "Certificate of Conference." The certificate should be placed at the end of the motion following the certificate of service. The certificate must state that counsel has conferred with opposing counsel in a good faith attempt to resolve the matter without court intervention. Failure to file an accompanying certificate of conference may be deemed sufficient grounds for denying the motion. Certificates of conference are not required for any motion involving pro se litigants (prisoner or non-prisoner) or for the following motions:

(1) motions to dismiss;
(2) motions in limine;
(3) motions for judgment of acquittal;
(4) motions to suppress;
(5) motions for new trial;
(6) any motion captioned as "joint", "agreed" or "unopposed";
(7) any motion permitted to be filed ex parte;
(8) motions for change of venue;
(9) applications for subpoenas under Fed. R. Crim. P. 17(b) or (c)(1);
(10) motions for a bill of particulars;
(11) motions relating to the selection of jurors.

(B) *Motions.* The original motion, response, rebuttal, supporting memorandum of authorities, and any supporting exhibits shall be filed with the clerk of court where the action is docketed. All motions, both dispositive and non-dispositive, shall be filed within the time limits ordered by the magistrate judge. All affidavits and other supporting documents and exhibits, excluding any memorandum of authorities, shall be filed with the original motion. All supporting exhibits shall be identified in the docket by both an exhibit letter or number and a meaningful description. Supporting exhibits should not be identified in the docket solely by exhibit letter or number. Further, all supporting exhibits cited in a pleading, which are not already of record, shall be filed under the same docket entry as the motion, response or rebuttal to which they relate. If such filing is not practicable, supporting exhibits may be filed as separately docketed attachments properly linked to the motion, response or rebuttal to which they relate.

Any memorandum of authorities shall be filed as a separate docket entry from the motion or response to which it relates and shall not be made an exhibit to a motion or response, except in the case of a motion for leave to submit the referenced brief or memorandum of authorities.

Movant's counsel shall submit to the appropriate judge's chambers, via email, any proposed order for a motion that may be heard ex parte, or is to be granted by consent.

(C) *Responses.*

(1) Within eleven calendar days after a motion is filed, the opposing party shall either respond to the motion or notify the court of its intent not to respond. No response to a motion for post-conviction relief, including but not limited to a motion filed pursuant to 28 U.S.C. § 2255, is required unless directed by the court. For any motion other than a dispositive motion or a motion for post-conviction relief, the court may grant the motion as unopposed if a party fails to respond or provide notice of its intent not to respond within the time allotted.

(2) The response to a motion, all opposing affidavits, and other supporting documents shall be filed with the clerk of court at the division where the action is docketed, and any response to a motion shall be filed in the same manner as provided for the filing of motions in paragraph (B) of this Rule.

(D) *Rebuttals.* Any counsel who desires to file a rebuttal may do so within five calendar days after the service of the response.

(E) *Memoranda of Authorities.* As a general rule, a supporting memorandum of authorities is not required for any motion, response or rebuttal in which there is a sufficient explanation of the relief requested and basis therefor within the body of the motion. A supporting memorandum of authorities is discouraged with regard to non-dispositive motions, applications, or motions that may be heard ex parte, and motions involving necessitous or urgent matters. However, a memorandum of authorities may be filed in support of any motion, response or rebuttal. Counsel shall file any memorandum of authorities at the same time that a motion, response or rebuttal is filed. No memorandum of authorities shall exceed 35 pages without prior leave of court.

(F) *Notice and hearings.*

(1) All motions shall be decided by the court without evidentiary hearing or oral argument unless otherwise ordered by the court on its own motion or, in the court's discretion, upon written request of counsel in an easily discernible manner on the face of the motion or responsive pleading regarding the need for a hearing or oral argument.

(2) The scheduling of an evidentiary hearing or oral argument, when allowed, shall be set at such time and place as directed by the judge. The court may, in its discretion, hear oral argument by video or telephone conference.

(G) *Service.* Movant and respondent shall serve copies of all pleadings and any supporting memorandum of authorities upon opposing counsel, except in applications under Fed. R. Crim. P. 17(b) or (c)(1) by defendants for the issuance of subpoenas for non-government witnesses or documents.

(H) *Untimely Motions.* Any motion filed beyond the motion deadline imposed by the magistrate judge in a scheduling order may be denied because the motion is filed untimely. Parties are encouraged to file all motions prior to the deadline. (Effective April 30, 2013.)

Rule 49.1. Sealing of court records.

The process for sealing court records shall be governed by Rule 79 of *The Uniform Local Civil Rules of the Northern and Southern Districts of Mississippi* EXCEPT for the following specific documents:

(A) *Charging Instruments and Warrants.* The government may seek to seal charging instruments and warrants as directed by the court.

(B) *Plea agreements.*

(1) All plea agreements shall be submitted with original signatures in paper format to the court and shall be sanitized by the drafter of any references to cooperation. After a plea has been accepted in open court, plea agreements shall be scanned and electronically filed as public, unsealed documents.

(2) All plea agreements shall be accompanied by a sealed document titled "Plea Supplement." The Plea Supplement will also contain the government's sentencing recommendation. The Plea Supplement will be electronically filed under seal. Ass cases will be docketed identically with reference to a sealed Plea Supplement, regardless of whether or not a cooperation agreement exists.

(3) The district judge may order the entire plea agreement to be sealed for a specified period of time if the court finds that exceptional circumstances exist warranting the sealing of the agreement.

(C) *Motions for Sentence Reductions based on Cooperation with the Government.*

(1) Government motions filed pursuant to Fed. R. Crim. P. 35 or Section 5K1.1 of the United States Sentencing Guidelines or 18 U.S.C. § 3553(e) shall be filed under seal without prior leave of court.

(2) The government must provide notice to counsel for the defendant that such motion has been filed and provide defense counsel with a copy of the motion. Defense counsel may not copy or distribute the motion nor may they reveal the contents of the motion to anyone other than their client without prior leave of court.

(3) Said motions will remain under seal indefinitely unless and until a court enters an order directing that they be unsealed. (Effective April 30, 2013.)

Rule 58. Assignment of misdemeanor cases.

All proceedings including trial and imposition of sentence in petty offense and other misdemeanor cases will be heard and conducted by the United States Magistrate Judges, subject to the limitations of 18 U.S.C. § 3401. (Effective April 30, 2013.)

Rule 60. Title.

These rules apply to the conduct of all criminal proceedings in this court and may be cited as *"The Uniform Local Criminal Rules of the United States District Courts for the Northern District and the Southern District of Mississippi,"* the "Uniform Local Criminal Rules," or, where reference is to a specific rule, either "Uniform Local Criminal Rule [*number*]" or "U.L.Cr.R. [*number*]." (Effective April 30, 2013.)

Editor's Note — This rule is set out to correct a publishing error in the rule number.

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UNIFORM LOCAL RULES OF THE UNITED STATES BANKRUPTCY COURTS FOR THE NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI

Originally adopted February 1, 2010; as amended December 1, 2019

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Editor's Note — In accordance with Federal Rule of Civil Procedure 83, Federal Bankruptcy Rule 9029, and the policies of the Judicial Conference of the United States, the Uniform Local Bankruptcy Rules for the Northern and Southern Districts of Mississippi are numbered consistent with related Federal Rules of Bankruptcy Procedure. The Uniform Local Rules reference only those Federal Rules of Bankruptcy Procedure for which a related local rule has been adopted.

RESEARCH REFERENCES

Practice References. Local Rules of the Bankruptcy Courts — 5th Circuit (Matthew Bender).

Local Rules of the Bankruptcy Courts — 5th Circuit (Matthew Bender).

Collier Local Bankruptcy Court Rules (Matthew Bender).

USCS Bankruptcy Rules Set (Michie).

Collier Bankruptcy Manual, Third Ed. Revised (Matthew Bender).

Collier Bankruptcy Practice Guide (Matthew Bender).

Collier on Bankruptcy, 15th Ed. Revised (Matthew Bender).

Daniel R. Cowans, Bankruptcy Law and Practice, Seventh Edition (Michie).

Collier Bankruptcy Library (CD Rom) (Matthew Bender).

Order Adopting Uniform Local Bankruptcy Rules.

UNITED STATES BANKRUPTCY COURTS
NORTHERN AND SOUTHERN
DISTRICTS OF MISSISSIPPI

ORDER ADOPTING UNIFORM LOCAL BANKRUPTCY RULES

The Bankruptcy Judges of the Northern and Southern Districts of Mississippi do hereby adopt the attached Uniform Local Bankruptcy Rules, effective February 1, 2010.

This Order is entered pursuant to the following: 28 U.S.C. § 2071; Rule 9029, Federal Rules of Bankruptcy Procedure; the Order entered by the District Judges of the Northern District of Mississippi on July 26, 1988; the Order entered by the District Judges of the Southern District of Mississippi on August 5, 1988; and, the approval of the said Rules by the Rules Committee, acting for the Judicial Council of the Fifth Circuit Court of Appeals, dated November 16, 2009.

The Clerks of each Court shall cause certified copies of this Order and the attached Uniform Local Bankruptcy Rules to be placed upon the records of each Court and shall forward certified copies to the Director of the Administrative Office of the United States Courts and the Judicial Council of the Fifth Circuit.

This Order and the attached Uniform Local Bankruptcy Rules shall be printed and made available by the Clerks of each Bankruptcy Court to the members of the Bar and to the public.

ORDERED AND ADOPTED this the 18th day of December, 2009.

/S/ David W. Houston, III

DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE

/S/ Edward Ellington

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

/S/ Edward R. Gaines

EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE

/S/ Neil P. Olack

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

It is hereby ordered that pursuant to Rule 9029, Federal Rules of Bankruptcy Procedure, the bankruptcy judge of this district is hereby authorized, subject to the requirements of Rule 83, Federal Rules of Civil Procedure, to make local rules regarding bankruptcy practice and procedure, not inconsistent with the Federal Rules of Bankruptcy Procedure.

ORDERED and ADJUDGED this the 26th day of July, 1988.

/S/ L.T. Senter, Jr.

L.T. SENTER, JR., Chief Judge
UNITED STATES DISTRICT COURT

/S/ Neal B. Biggers

NEAL B. BIGGERS
UNITED STATES DISTRICT JUDGE

/S/ Glen H. Davidson

GLEN H. DAVIDSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

It is hereby ordered that, pursuant to Bankruptcy Rule 9029, the bankruptcy judges of this district are authorized, subject to the requirements of 83 FR Civ

P, to make rules of practice and procedure not inconsistent with the Bankruptcy Rules.

SO ORDERED this the 5th day of August, 1988.

/S/ William H. Barbour, Jr.

WILLIAM H. BARBOUR, JR.
UNITED STATES DISTRICT JUDGE

/S/ Tom S. Lee

TOM S. LEE
UNITED STATES DISTRICT JUDGE

/S/ Henry T. Wingate

HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE

/S/ Walter J. Gex, III

WALTER J. GEX, III
UNITED STATES DISTRICT JUDGE

COMMENT

This rule is amended to take account of the enactment of the National Guard and Reservists Debt Relief Act of 2008, which amended § 707(b)(2)(D) of the Code to provide a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces. This exclusion applies to qualifying debtors while they remain on active duty or are performing a homeland defense activity, and for a period of 540 days thereafter. For some debtors initially covered by the exclusion, the protection from means testing will expire while their chapter 7 cases are pending, and at a point when a timely motion to dismiss under § 707(b)(2) can still be filed. Under the amended rule, these debtors are required to file the statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of their exclusion.

Subdivisions (b)(4) and (c) are amended to relieve debtors qualifying for an exclusion under § 707(b)(2)(D)(ii) from the obligation to file a statement of current monthly income and required calculations within the time period specified in subdivision (c).

Subdivision (n)(1) is added to specify the time for filing of the information required by subdivision (b)(4) by a debtor who initially qualifies for the means test exclusion under § 707(b)(2)(D)(ii), but whose exclusion expires during the time that a motion to dismiss under §707(b)(2) may still be made under Rule 1017(e). If, upon the expiration of the temporary exclusion, a debtor has not already filed the required statement and calculations, subdivision (n)(2) directs the clerk to provide prompt notice to the debtor of the time for filing as set forth in subdivision (n)(1).

PART I COMMENCEMENT OF CASE: PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

Rule 1001-1. Scope of Rules and Forms; Short Title.

(a) These rules ("Local Rules") shall be known as the "Uniform Local Rules of the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi." The Local Rules may be cited as "Miss. Bankr. L.R. ____."

(b) These Local Rules govern proceedings in the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi in accordance with section 105(a) of the Bankruptcy Code[1] and Fed. R. Bankr. P. Rule 9029. The application of these Local Rules may be modified by the court in any given case or proceeding in the interest of justice.

(c) These Local Rules, as originally adopted with an Effective Date of February 1, 2010, along with amendments approved by Orders of the bankruptcy judges, shall be effective as of December 1, 2019.

(d) All prior local rules and all standing orders or general orders issued prior to February 1, 2010, by the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi shall be repealed. The repeal of any prior rule or order shall not affect any act done pursuant to or obviate any act required by any prior local rule or order. These Local Rules govern all cases filed on and after the Effective Date. They shall also apply to cases and proceedings pending on the Effective Date, except to the extent that the court finds they would not be feasible or would work an injustice.

(e) Nothing in these Local Rules precludes the bankruptcy courts from entering general standing orders or guidelines to supplement these Rules.

(f) The bankruptcy courts, by Standing Orders, may adopt Mississippi Local Rules Forms for stated purposes. Ordinarily, these Local Forms shall be used in their given format with only such minor alterations as necessary to accommodate other word processing and printing equipment.

(g) All attorneys practicing before the bankruptcy courts for the Northern and Southern Districts of Mississippi shall acquaint themselves with these Local Rules. Attorneys shall be subject to appropriate sanctions for failure to comply with these Local Rules, and nothing contained herein shall limit the authority of the bankruptcy courts to impose appropriate sanctions for failure to comply with these Local Rules, Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or other applicable law. (Amended effective January 1, 2012; amended effective December 1, 2014; amended effective December 1, 2016; amended December 1, 2017; amended June 1, 2018; amended effective December 1, 2019.)

Rule 1002-1. Commencement of Case.

(a) *Petition.*

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[1] Unless otherwise noted, all references to the "Bankruptcy Code" or to "section ____" shall be references to Title 11 of the United States Code.

(1) All petitions shall be filed in accordance with Fed. R. Bankr. P. Rule 5005 and Miss. Bankr. L.R. 5005-1.

(2) Any Petitioner other than an unrepresented individual shall be represented by counsel.

(b) *Notice.* Unless there are exigent circumstances, counsel for the debtor shall contact the United States Trustee at least two (2) business days prior to filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code for the purpose of advising the United States Trustee of the anticipated filing of the petition (without disclosing the identity of the debtor) and the matters on which the debtor intends to seek immediate relief. Counsel shall also comply with the noticing provisions set forth in Miss. Bankr. L.R. 9013-1(g)(3). (Amended effective December 1, 2015.)

Rule 1006-1. Filing fee.

(b) *Payment of filing fee in installments.*

(1) *Application to pay filing fee in installments.* A debtor represented by counsel, that files an application to pay the filing fee in installments must file a disclosure from the debtor's counsel of an accounting for any fees paid by the debtor to debtor's counsel prior to filing the application. The disclosure shall be in a form as prescribed by the Clerk. Any portion of the filing fee received by counsel prior to the filing of the petition shall be paid to the Clerk at the time the petition is filed. Failure to comply with this subdivision may result in the denial of the application, the imposition of sanctions, or both, after notice and hearing.

(4) *Fees owed from previous case.* If a debtor files an application to pay filing fees in installments, and the debtor owes an unpaid fee from a previous case filed within five calendar years, the Court may deny the application and allow the debtor 14 days from the entry of the order to pay the entire filing fee for the current case. If the entire filing fee is not paid, the Court may dismiss the case without further notice or hearing. (Amended effective June 1, 2018.)

Rule 1007-1. Lists, Schedules, Statements, and Other Documents; Time Limits.

(c) *Time limits.*

(1) In chapter 13 cases, the debtor shall file the schedules, statements and other documents, and a proposed chapter 13 plan (the "preliminary documents") within fourteen days of the order for relief pursuant to Fed. R. Bankr. P. 1007(c) and 3015(b). If a bankruptcy petition is not accompanied by the preliminary documents, the Clerk shall cause the debtor's attorney (or the debtor) to be notified of the rule requiring such documents to be filed within fourteen days from the order for relief and the Court's policy of enforcing the rule through the *sua sponte* dismissal of the case.

(2) For cause shown, the fourteen day deadline may be extended by the Court pursuant to Fed. R. Bankr. P. 9006(b)(1). As a general rule, the Court will grant a debtor only a single fourteen day extension to file the preliminary

documents. Further requests for extension may be summarily denied by the Court. Any request for an additional extension must include a demonstration of good cause. (Amended effective June 1, 2018.)

Rule 1009-1. Amendments of Voluntary Petitions, Lists, Schedules and Statements.

(a) *General right to amend.*

(1) If at any time after the clerk[2] issues notice of the meeting of creditors under section 341 in a case under any chapter under title 11, the debtor amends Schedule D, E or F and/or the creditor matrix to add any creditors, the following procedures shall apply:

(A) The debtor shall pay the prescribed filing fee;

(B) The debtor shall serve upon such additional creditors by first class mail:

(i) A copy of the first notice of meeting of creditors under section 341 with the debtor's full social security account number shown thereon;

(ii) A notice informing the creditors that they have 60 days within which to file a complaint objecting to discharge under section 727 or section 1141 or to the dischargeability of any debt under section 523(c); to file a motion objecting to discharge under section 727 or section 1328; or to file a motion to seek an extension of time for filing a complaint or motion objecting to discharge, unless a longer period of time is provided by Fed. R. Bankr. P. 4004, 4007 or 9006;

(iii) A notice informing the creditors that they have 21 days to request the United States Trustee[3] to schedule an adjourned section 341 meeting of creditors; and

(iv) Notice of Additional Time to File Proof of Claim.

(a) In a case filed under Chapter 7, 12 or 13, the debtor shall serve upon such additional creditors by first class mail a notice informing the creditors of the creditor's right to file a proof of claim within 70 days from the date of the notice.

(b) In a case filed under Chapter 11, if the debtor or trustee in a chapter 11 case amends the debtor's schedules to change the amount, nature, classification, or characterization of a debt owing to a creditor after a bar date for the filing of proofs of claim has been set, the debtor or trustee shall serve notice of the amendment to the creditor within 14 days of its filing and shall serve notice of the creditor's right to file a proof of claim by the bar date or 30 days from the date of the notice, whichever is later. The debtor or trustee shall file a certificate of service of the notice with the clerk.

(C) The debtor shall file a certificate of service with the clerk and provide an amended creditor matrix to the clerk in such format as the clerk's office may direct. (Amended effective January 1, 2012; amended effective December 1, 2017.)

Rule 1015-1. Consolidation or Joint Administration of Cases Pending in the Same Court.

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[2] 2 "Clerk" means the United States Bankruptcy Clerk for the appropriate district.

[3] 3 "United States Trustee" means the appropriate person within the Office of the United States Trustee.

(b) *Cases involving two or more related debtors.* A party in interest may file a motion seeking an order of joint administration after notice and opportunity for hearing, upon the filing of a motion for joint administration pursuant to Fed. R. Bankr. P. Rule 1015, supported by an affidavit, declaration or verification, which establishes that the joint administration of two or more cases pending in the court under title 11 is warranted and will ease the administrative burden for the court and the parties. An order of joint administration entered in accordance with this local rule may be reconsidered upon motion of any party in interest at any time. An order of joint administration under this local rule is for procedural purposes only and shall not cause a substantive consolidation of the respective debtors' estates.

Rule 1017-1. Dismissal or Conversion of Case; Suspension.

(f) *Procedure for Dismissal, Conversion, or Suspension.*

(2) *Debtor's motion to dismiss chapter 13 case.*

(A) A debtor in a case filed under chapter 13 may move to dismiss the case pursuant to section 1307(b). The debtor's motion shall be in writing and shall state whether the case has been converted previously under section 706, 1112, or 1208.

(B) The motion shall be filed and served as required by Fed. R. Bankr. P. 9013.

(C) If the court determines that dismissal is appropriate, the court may enter an ex parte order granting the debtor's motion without notice or hearing. Notwithstanding entry of the order, any party in interest may file an objection to the debtor's motion within 14 days of entry of the order. Upon consideration of any objection timely filed, the court may, at its discretion, conduct a hearing or rule on the matter without a hearing. (Effective December 1, 2015.)

PART II OFFICERS AND ADMINSTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2002-1. Notices to Creditors, Equity Security Holders, United States, and United States Trustee.

(j) *Notices to the United States.* In the event that the United States of America or any agency thereof is listed as a creditor, the debtor or debtor in possession, shall include on the master mailing list or matrix the name of the agency in care of the United States Attorney for the district in which the case is filed and also the name of the agency at its local field office address. This rule supplements, and in no way modifies, the notice requirements of Fed. R. Bankr. P. Rule 2002(j).

(m) *Orders designating matter of notices.* Whenever a party requests the court to limit the number of persons or entities to whom notice is given for any particular matter, the following categories of persons or entities (without prohibiting noticing to other persons or entities) must be included in any such limited notice:

(1) All persons or entities constituting the creditors' committee or the equity security holders' committee, if any, in a chapter 11 case, or if there is no creditors' committee, all entities constituting the 20 largest unsecured creditors;

(2) All persons or entities noted on the docket (or otherwise reasonably ascertainable) as having entered their respective appearances by filing documents declaring their respective entries of appearance and/or requesting further noticing; provided however, the elimination of any such entities on account of their having been terminated as interested parties or otherwise having concluded their interest shall be left to the noticing entity, subject to due process considerations;

(3) All necessary or appropriate taxing authorities;

(4) The United States Trustee;

(5) The United States Attorney for the district in which the case is pending, if applicable;

(6) All attorneys identified on the docket (or otherwise reasonably ascertainable) as having participated in the case except any attorney or attorneys who shall have been permitted by the court to withdraw from representation or who, in the discretion of the noticing entity, shall no longer be a necessary notice subject to due process considerations; and

(7) The case trustee, if a trustee has been appointed.

Rule 2003-1. Meeting of Creditors or Equity Security Holders.

(a) *Date and place.*

(1) *Appearance.* The appearance of the debtor and the debtor's attorney at the section 341(a) meeting is mandatory, unless waived as set forth in subsection (3) below. Failure of the debtor and the debtor's attorney to attend this meeting may result in the dismissal of the bankruptcy case or the imposition of sanctions (including the assessment of the expenses and attorney's fees of creditors attending the meeting as noticed), or both, but such dismissal or sanctions shall be granted by the court only after notice and a hearing.

(2) *Rescheduling section 341 meeting.* Rescheduling of the section 341 meeting shall be for good cause shown. Any request made prior to the scheduled section 341(a) meeting to reschedule the section 341(a) meeting shall be submitted to the United States Trustee (or, to the case trustee if such authority has been delegated by the United States Trustee) in Chapter 7, 12, or 13 cases and to the United States Trustee in all other cases, and such request shall be made at least seven (7) days prior to the scheduled section 341 meeting, except in emergency or extraordinary circumstances. If this request is denied by the case trustee or United States Trustee (as appropriate), a motion to reschedule the section 341 meeting may be made to the court. In the event the section 341 meeting is rescheduled, the requesting party shall be

responsible for notifying all creditors of the date of the rescheduled section 341(a) meeting, and failure to so notify creditors may result in the imposition of appropriate sanctions.

(3) *Waiver of appearance.* Upon written motion, the court, after notice and hearing, for cause shown, may waive the appearance of the debtor at the section 341(a) meeting of creditors. Waivers may be granted where a debtor is physically unable to appear at the original or rescheduled section 341(a) meeting of creditors or is unable to appear because of a mental incapacity. A motion to waive appearance shall be filed at least seven (7) days prior to the initial meeting of creditors or any rescheduled meeting of creditors and served on the interim trustee or the case trustee, as appropriate, the United States Trustee and all creditors. (Amended effective January 1, 2012.)

Rule 2004-1. Examination.

(a) *Examination on motion.*

(1) *Good faith duty to confer.* Counsel for the parties and any unrepresented individuals shall have a duty to make a good faith effort to resolve by agreement, among themselves, any disputes with regard to an examination and production of documents under Fed. R. Bankr. P. Rule 2004, including its scheduling, its scope, its length and the production of documents. Any objection to an order for a Rule 2004 examination, a motion to enforce compliance with such an order or with a subpoena under Fed. R. Bankr. P. Rule 9016 or a motion seeking to modify, limit or quash such an order shall be accompanied by a statement certifying that counsel for the moving or objecting party or the unrepresented individual have conferred or made a good faith effort to confer in an attempt to resolve the controversy by agreement, but that such efforts were not successful.

(2) *Examination by notice.* Examination and production of documents pursuant to Fed. R. Bankr. P. Rule 2004 may be initiated by notice, if the entity to be examined consents. The notice shall specify the scope of the examination and the date, time and place of the examination; describe any documents to be produced; and shall be served upon the debtor, the debtor's attorney, the chapter 7, 11, 12 or 13 trustee as appropriate, the United States Trustee, and the entity to be examined. The notice must be filed and served no later than 14 days before the date set for the examination.

Rule 2014-1. Employment of Professional Persons.

(a) *Application for and order of employment.*

(1) In addition to the requirements of Fed. R. Bankr. P. 2014(a), an application seeking to employ multiple professionals, in contingency cases, shall include a specific allocation of fees, by percentage, among such professionals.

(2) An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professionals will not constitute approval of the professional's fee contract or compensation. A request for approval of a

professional's fee contract or compensation will be made by separate application in accordance with Fed. R. Bank. P. 2016, and approved by a separate order.

(c) *Nunc Pro Tunc Application*

(1) If an application for the approval of the employment of a professional seeks to make the authority retroactive to the commencement, the application must include:

(A) An explanation of why the application was not filed earlier;

(B) An explanation why the order authorizing employment is required *nunc pro tunc* ;

(C) An explanation, to the best of the applicant's knowledge, how approval of the application may prejudice any parties-in-interest.

(2) An application for approval of employment of a professional nunc pro tunc shall be approved only on notice and opportunity for hearing. All creditors in the case must be served with notice of the application. (Effective June 1, 2018.)

Rule 2015-1. Duty to Keep Records, Make Reports, and Give Notice of Case.

(b) *Chapter 12 trustee and debtor in possession.* In a Chapter 12 case, the debtor in possession or the trustee shall file a Monthly Operating Report in the form prescribed by the United States Trustee. The Monthly Operating Report shall be filed on or before the 20th day of each month following the month the subject of the report until a plan is confirmed, or the case is converted or dismissed. A signed copy of the Monthly Operating Report shall be furnished to the United States Trustee.

Rule 2016-1. Compensation for Services Rendered and Reimbursement of Expenses.

(b) *Disclosure of compensation paid or promised to attorney for debtor.* If the statement required under Fed. R. Bankr. P. Rule 2016(b) is not timely filed, the case shall be subject to dismissal. At the meeting of creditors required by section 341, the officer conducting the meeting shall review the statement of disclosure of compensation to verify that it complies with Fed. R. Bankr. P. Rule 2016(b). If the statement fails to comply with the rule, the presiding officer may promptly file a motion to show cause why the case should not be dismissed.

(d) *Compensation of Chapter 13 debtor's attorneys.*

(1) In chapter 13 cases filed after the Effective Date of these rules, the court, by separate standing order, which may be amended from time to time, may set a cap on the amount of fees that generally will be approved ex parte without the need for notice and a hearing.

(2) The fee approved by the court will be on the basis that the scope of representation by the attorney includes both pre-confirmation and post-confirmation representation of the debtor, except for representation in any

adversary proceeding. Once an attorney sets a fee and files a petition for the debtor, the attorney is expected to represent the debtor conscientiously on all matters within the scope of the representation until the debtor is granted or denied a discharge or the case is dismissed. No additional fee shall be sought from the debtor or accepted by the attorney without prior court approval.

(3) In larger business cases or in cases involving an inordinate amount of time or representation in an adversary proceeding, the court will consider a request for attorney's fees in excess of the previously approved amount.

PART III CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001-1. Proof of Claim.

(a) *Form and content.* A creditor asserting a secured claim shall submit, as an attachment, proof that the asserted security interest has been perfected in accordance with applicable law.

(e) *Transferred claim.*

(2) *Transfer of claim other than for security after proof filed.* Any assignment or other evidence of a transfer of claim filed after the proof of claim has been filed shall include the claim number of the claim to be transferred. In chapter 11 cases, any assignment or other evidence of a transfer of a claim filed where no proof of claim has been filed shall include reference to the scheduled claim, including the classification and amount.

(6) *Note not required.* Where evidence of full or partial transfer of a claim is filed which contains the signatures of both the transferor and transferee and such evidence of transfer is filed pursuant to Bankruptcy Rule 3001(e)(4) and in accordance with the Local Rules, the clerk shall not provide notice of the filing of evidence of the transfer and no objection deadline for the transfer of the claim shall be established. The transferor shall be deemed to have waived any objection to the transfer, and the claim shall be noted as having been transferred in the records of the court.

(7) *Order not required.* Where notice is required, absent any timely filed objection to the notice of transfer served by the clerk, the claim, without any further order of the court, shall be noted as having been transferred in the records of the court.

Rule 3002-1. Filing Proof of Claim or Interest.

(c) *Time for filing.* As provided in Miss. Bankr. L.R. 1009-1(a)(1)(B)(iv)(a), in a case filed under Chapter 7, 12 or 13, where the debtor amends Schedule D or E/F and/or the creditor matrix to add any creditors, the debtor shall serve upon such additional creditors by first class mail a notice informing the creditors of the creditor's right to file a proof of claim within 70 days from the date of the notice.

JUDICIAL DECISIONS

Motion to close granted.

Where the chapter 11 debtor sought an early discharge and entry of a final decree pursuant to 11 U.S.C.S. § 1141(d)(5)(A) and (B), he was denied that relief where his payments under the plan did not match at least liquidation value, but he was entitled to closure without a discharge under 11 U.S.C.S. § 350(a), Fed. R. Bankr. P. 3022, and Bankr. N.D. & S.D. Miss. R. 3022-1, subject to a later reopening to grant a discharge. In re Necaise, 443 B.R. 483 (Bankr. S.D. Miss. 2010).

Rule 3003-1. Filing of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases.

(c) *Filing proof of claim.*

(3) *Time for filing.*

(i) Unless otherwise ordered by the court, all persons and entities that assert a claim, as defined in section 101(5) against the debtor which arose on or prior to the filing of the Chapter 11 petition shall file a proof of such claim on or before the date that is 120 days after the date of the order for relief, except that proofs of claim filed by governmental units must be filed on or before the date that is 180 days after the date of the order for relief.

(ii) As provided in Rule 1009-1(a)(1)(B)(iv)(b), in a case filed under Chapter 11, if the debtor or trustee in a chapter 11 case amends the debtor's schedules to change the amount, nature, classification, or characterization of a debt owing to a creditor after a bar date has been set, the debtor or trustee shall serve notice of the amendment to the creditor within 14 days of its filing and shall serve notice of the creditor's right to file a proof of claim by the bar date or 30 days from the date of the notice, whichever is later.

Rule 3007-1. Objections to Claims.

(a) *Time and Manner of Service.*

(3) *Minimum information for objection to claims; requirements.* An objection to a claim shall include, at a minimum, the following information:

(A) the name of claimant;

(B) the claim number as indicated on the claims docket maintained by the clerk;

(C) the claim amount;

(D) the basis for the objection; and

(E) the amount of the claim, if any, to which there is no objection.

(4) *Notice; hearing.*

Objections to claims are contested matters and may be considered after notice and opportunity for a hearing as provided by Miss. Bankr. L.R. 9013-1(d). The objecting party shall file and serve a copy of the objection with notice of a 30 day response period to the claimant, the debtor or debtor in possession, and the trustee. If a timely response to a claims objection is filed, a hearing on the claims objection will be conducted in accordance with Fed. R. Bankr. P. 3007. (Amended effective December 1, 2014; amended effective December 1, 2017.)

Rule 3015-1. Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case.

(d) *Notice.* In all chapter 13 cases, the attorney for the debtor (or the debtor) shall serve a copy of the plan and a notice on the trustee, the United States Trustee, and all creditors no later than 7 days after the filing of the Notice of Chapter 13 Bankruptcy Case (Official Form 309I) or the filing of the plan, whichever is later. The notice shall substantially comply with the format prescribed by the Clerk and made available on the Court's website. If a chapter 13 plan includes a Motion for Valuation of Collateral pursuant to Fed. R. Bankr. P. 3012 or a Motion to Avoid Lien pursuant to Fed. R. Bankr. P. 4003, the attorney for the debtor (or the debtor) shall serve a copy of the plan and a notice on affected creditors in the manner provided by Fed. R. Bankr. P. 7004 for service of a summons and complaint. The attorney for the debtor (or the debtor) shall file the notice and a certificate of service with the court that includes a copy of the plan and a record of the parties served.

(g) *Effect of confirmation.*

(1) *Order Confirming Chapter 13 Plan.* A proposed order confirming chapter 13 plan shall be submitted by the chapter 13 trustee using the local form authorized by the judges of the Northern and Southern Districts of Mississippi. The local form is included as Appendix B to these Uniform Local Bankruptcy Rules.

From time to time, the judges of the Northern and Southern Districts may change the format or make typographical corrections to the local form order confirming chapter 13 plan. Any such non-substantive changes will be reported to registered attorney filers via email. If the judges seek to make substantive changes to the local form order confirming chapter 13 plan, such proposed changes will be advertised for public comment and submitted to the Fifth Circuit Judicial Council for final approval as an amendment to the local rules.

(h) *Modification of plan after confirmation.*

(1) *Requirement for amended Schedules I and J.* If a debtor in a chapter 12 or a chapter 13 case files a request to modify a confirmed plan pursuant to sections 1229 or 1329 based in whole or in part upon a change in the amount of the debtor's income or expenses, the debtor shall file amended Schedules I and J evidencing such change in financial circumstances contemporaneously with the Notice of Modification.

(2) *Secured claims timely filed after plan confirmation.* If a proof of claim, which claims a security interest in the property of the debtor, is timely filed after confirmation of the plan, but is not provided for in the plan, the claim can only be paid through the confirmed plan following a request for modification and order, as provided for in Fed. R. Bankr. P. 3015(h). Nothing contained herein shall control the treatment of the claim in the confirmed plan. (Amended effective December 1, 2013; amended effective December 1, 2014; amended effective December 1, 2017; amended effective December 1, 2018.)

Editor's Note — See Procedure for Modification of Chapter 13 Plan Standing Order, amended effective June 1, 2018, which supplements this rule and establishes a procedure for modification of Chapter 13 plans.

Rule 3015.1-1. Local Form for Chapter 13 Plan and Motions for Valuation and Lien Avoidance.

All chapter 13 plans filed by or on behalf of the debtor shall be filed using the local form authorized by the judges of the Northern and Southern Districts of Mississippi under the authority of Fed. R. Bankr. P 3015.1. The local form chapter 13 plan for the Northern and Southern Districts of Mississippi is included as Appendix A to these Uniform Local Bankruptcy Rules.

All information entered on the local form chapter 13 plan shall be in a typewritten format. The filer of a chapter 13 plan shall not attempt to make substantive alterations to the local form chapter 13 plan (i.e., strike-through of standard provisions, add new standard provisions, use Part 8 of the local form chapter 13 plan to alter existing standard provisions or add non-standard provisions that are inapplicable to the debtor's case). The Court may strike a chapter 13 plan that is submitted with substantive alterations to the local form chapter 13 plan.

From time to time, the judges of the Northern and Southern Districts of Mississippi may change the format or make non-substantive changes to the local form chapter 13 plan in Appendix A. Any such non-substantive changes will be reported to registered attorney filers via email. If the judges seek to make substantive changes to the local form chapter 13 plan, such proposed changes will be advertised for public comment and submitted to the Fifth Circuit Judicial Council for final approval as an amendment to the local rules. (Effective December 1, 2017; amended effective December 1, 2019.)

Rule 3018-1. Acceptance or Rejection of Plan in a Chapter 11 Reorganization.

(a) *Voting.* Unless provided otherwise by order of the Court, no ballots shall be filed with the Clerk of Court. The notice, which is required by Fed. R. Bankr. P. 3017(d), shall direct that all ballots be submitted to the plan proponent, or designated agent, at a specified mailing address.

(b) *Ballot Summary and Certification.* For all hearings on confirmation of a Chapter 11 plan, the plan proponent must prepare a written *Ballot Summary and Certification* in substantially the same format as prescribed by the Clerk and made available on the Court's website. At least three days prior to the confirmation hearing, the plan proponent or its designated agent shall file with the Court the *Ballot Summary and Certification* and, unless the Court orders otherwise, attach copies of all ballots thereto. (Effective December 1, 2013.)

Rule 3022-1. Final Decree in Chapter 11 Reorganization Case.

(a) *Closing of chapter 11 cases.*

(1) *Motion.* Upon written motion, a party in interest may seek the entry of a final decree to close a chapter 11 case at any time after the confirmed plan has been entered provided that all required fees due under 28 U.S.C. §1930 have been paid. Such motion shall include a proposed final order closing the

lead case and any jointly administered cases and shall identify the case name and the case number of all cases to be closed under the order.

(2) *Service.* A motion for the entry of a final order closing the Chapter 11 case shall be served upon the debtor, the trustee, if any, the United States Trustee, all official committees and all creditors who have filed a request for notice under Fed. R. Bankr. P. Rules 2002 and 9010.

(3) *Final Report.* The debtor (or trustee, if any) shall file a final report and account in the form prescribed by the United States Trustee on or before fourteen (14) days prior to the hearing on any motion to close the case.

PART IV THE DEBTOR: DUTIES AND BENEFITS

Rule 4001-1. Relief from Automatic Stay; Prohibiting or Conditioning the Use, Sale, or Lease of Property; Use of Cash Collateral; Obtaining Credit; Agreements.

(a) *Relief from stay; prohibiting or conditioning the use, sale, or lease of property.*

(1) *Motion.*

(A) *Service.* A motion pursuant to section 362(d) and Fed. R. Bankr. P. Rule 4001(1) seeking relief from the automatic stay shall be served in the manner provided for by Fed. R. Bankr. P. Rules 9014 and 7004. Additionally, unless otherwise ordered by the court, such motion shall be served on any entity having a known lien on the subject property (excluding ad valorem taxing authorities) or that will be affected by the relief requested in the motion; on the United States Trustee; on the case trustee; on any chapter 11 creditors' committee (or its agent); on the creditors listed pursuant to Fed. R. Bankr. P. Rule 1007 (only in the absence of duly appointed creditors' committees); and on any person or entity who has filed a request for the receipt of all notices in the case or proceeding and who has served such requests on the trustee or debtor in possession.

(B) *Supporting documentation.* When a motion seeking relief from the automatic stay is filed, the moving party shall include in the motion and/or attach to the motion the following:

(i) A description of the subject property;

(ii) A complete and legible copy of movant's security agreements and security instruments which establish a valid lien encumbering the subject property;

(iii) The value of the subject property and the basis of the valuation; and,

(iv) The amount of the outstanding indebtedness secured by each lien encumbering the subject property as reflected by the schedules of the debtor(s) or such other amount as may be known by the movant.

(C) *Initial 4001-1 conference.* The attorneys for movant or any objecting parties shall confer with respect to the issues raised by the motion in advance of the hearing for the purpose of determining whether a consensual order may be entered and/or for the purpose of stipulating to relevant facts, such as the value of the property and the extent and validity of any security instrument.

(D) *Agreed order.*

(i) If the moving creditor, the debtor(s) and the trustee agree as to the relief to be granted and if relief from the automatic stay as well as abandonment is not contested, an agreed order signed by the debtor(s) or the attorney for the debtor(s), the trustee and the moving creditor shall be submitted to the court for consideration no later than 14 days after the date scheduled for hearing on the subject motion. Parties to whom the order or judgment has been submitted shall promptly sign it or promptly contact the party who drafted it to express any objection to the form of the proposed order or judgment. The parties shall attempt to resolve any differences in the form of the order or judgment before submitting competing orders or judgments to the court.

(ii) As provided by Fed. R. Bankr. P. Rule 4001(d)(4), the court may direct that the procedures prescribed by Fed. R. Bankr. P. Rule 4001(d)(1)-(3) shall not apply and the agreement may be approved without further notice if the court determines that a motion made pursuant to Fed. R. Bankr. P. Rule 4001(a)-(c) was sufficient to afford reasonable notice of the material provisions of the agreement and an opportunity for a hearing; otherwise, notice of the proposed agreed order shall be given to the appropriate creditors and parties in interest.

(E) *Order Affecting Real Property.* Any Order affecting real property shall either incorporate the legal description of the real property in the body of the order itself, or attach a legal description of the real property as an exhibit to the order. This paragraph shall not apply to an Order to confirm a chapter 13 plan.

(3) *Waiver or Reduction of Stay of Order.* Any proposed order granting relief from the automatic stay may not waive or reduce the 14-day stay unless the motion for relief from the automatic stay specifically states the basis for the waiver or reduction, although the moving creditor, debtor(s), and the trustee may agree to waive or reduce the 14-day stay. The Court may require that a hearing be held on a request for a waiver or reduction of the 14-day stay.

(b) *Use of Cash Collateral and Financing Orders.*

(1) *Motion.*

(A) *Financing Motions.* Except as provided herein or in the Local Rules, all cash collateral and financing requests under 11 U.S.C. §§ 363 and 364 shall be heard by motion filed under Fed. R. Bankr. P. 2002, 4001 and 9014 ("Financing Motions"). All Financing Motions filed as an expedited or emergency matters, including specifically First Day Motions as defined in Miss. Bankr. L.R. 9014-1 shall comply with Miss. Bankr. L.R. 9013-1(f) and 9014-1, in addition to this rule.

(B) *Provisions to be Highlighted.* All Financing Motions must (a) recite whether the proposed form of order and/or underlying cash collateral stipulation or loan agreement contains any provision of the type indicated below, (b) identify the location of any such provision in the proposed form of order, cash collateral stipulation and/or loan agreement and (c) justify the inclusion of such provision:

(i) All of the provisions described in Fed. R. Bankr. P. 4001(c)(1)(B) and (d)(1)(B).

(ii) A complete and legible copy of movant's security agreements and security instruments which establish a valid lien encumbering the subject property;

(iii) Provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured creditor to pay part or all of that secured creditor's prepetition debt, other than as provided in 11 U.S.C. § 552(b);

(iv) Provisions that provide disparate treatment for the professionals retained by a creditors' committee from those professionals retained by the debtor with respect to a professional fee carve-out;

(v) Provisions that prime any secured lien without the consent of that lienor;

(vi) Provisions that grant liens on the debtor's property that is unencumbered by consensual liens;

(vii) Provisions that grant the secured creditor the right to exercise remedies upon a default by the debtor, without notice to the debtor and other parties-in-interest, a hearing, and further order of the court; and

(viii) Provisions or findings of fact that purport to bind a later appointed trustee to the agreement of the debtor.

(C) All Financing Motions shall also provide a summary of the essential terms of the proposed use of cash collateral and/or financing (e.g., the maximum borrowing available on a final basis, the interim borrowing limit, borrowing conditions, interest rate, maturity, events of default, use of funds limitations and protections afforded under 11 U.S.C. §§ 363 and 364).

(D) *Interim Relief.* When Financing Motions are filed with the Court on or shortly after the petition date, the Court may grant interim relief pending review by interested parties of the proposed debtor-in-possession financing arrangements. Such interim relief shall be only what is necessary to avoid immediate and irreparable harm to the estate pending a final hearing. In the absence of extraordinary circumstances, the Court will not approve interim financing orders that include any of the provisions previously identified in Sections (1)(A)(i)-(viii).

(E) *Final Orders.* A final order shall be entered only after notice and a hearing under Fed. R. Bankr. P. 4001. Ordinarily, the final hearing shall be held at least five (5) business days following the organizational meeting of the creditors' committee contemplated by 11 U.S.C. § 1102.

(c) *Obtaining Credit.* The provisions of subpart (b) of this rule shall apply to all motions filed requesting credit under 11 U.S.C. § 364.

(e) *Procedure Regarding Motion to Extend the Automatic Stay Pursuant to Section 362(c)(3)(B).*

(1) Any party in interest seeking a continuation of the automatic stay pursuant to 11 U.S.C. §362(c)(3)(B), shall file, in accordance with Fed. R. Bank. Pro. Rule 9013, a motion and proposed order. The movant shall state whether continuation of the automatic stay is sought with respect to all creditors or, if less than all creditors, shall specify the creditor(s) with respect to whom the continuation of the automatic stay is sought. The movant also shall set forth facts to establish that the filing of the present bankruptcy case was in good faith.

(A) Motion to extend the automatic stay pursuant to § 362(c)(3)(B) must be filed within 7 days after the date of the filing of the petition.

(B) Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* (the "Declaration") as an attachment to the motion. The Declaration shall be in the form as prescribed by the Clerk.

(C) The debtor must serve a copy of the motion and Declaration on all parties against whom the debtor seeks to continue the stay within 2 days after the filing of the motion and Declaration and file a certificate of service with the clerk.

(2) For a motion to continue the automatic stay filed on or within 7 days of the date of filing the petition, the court shall set a hearing date no later than 30 days after the filing of the petition. For a motion to continue the automatic stay filed more than 7 days after the date of the filing of the petition, the court shall set a hearing date with not less than 14 days notice. The mere filing of the motion will not extend the automatic stay beyond the 30th day after the filing of the petition. If the hearing date is more than 30 days after the date of the filing of the petition, it is incumbent on the debtor or other party in interest to seek an injunction (through the filing of a complaint and motion for a Temporary Restraining Order) to stop any creditor/lienholder collection efforts which may be scheduled to occur after the 30th day following the filing of the petition, but before the hearing on the motion to continue the automatic stay.

(3) A party in interest opposing a motion for continuation of the automatic stay must file a response to the motion. The opponent shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed upon granting a continuance of the stay.

(4) In the absence of a timely filed response, and the debtor has filed an appropriate Declaration in support of the Motion, the Court may grant the motion without conducting a hearing.

(f) *Procedure Regarding Motion to Impose the Automatic Stay Pursuant to Section 362(c)(4)(B).*

(1) Any party in interest seeking to impose the automatic stay pursuant to 11 U.S.C. §362(c)(4)(B), shall file, in accordance with Fed. R. Bankr. P. 9013, a motion and proposed order. The movant shall state whether imposing the automatic stay is sought with respect to all creditors or, if less than all creditors, shall specify the creditor(s) with respect to whom imposing the automatic stay is sought. The movant also shall set forth facts to establish that the filing of the present bankruptcy case was in good faith.

(A) Pursuant to 28 U.S.C. § 1746, the debtor must file a *Declaration in Support of the Motion* (the "Declaration") as an attachment to the motion. The Declaration shall be in the form prescribed by the Clerk and made available on the Court's website.

(B) The debtor must serve a copy of the motion and Declaration on all parties against whom the debtor seeks to impose the stay within 2 days after the filing of the motion and Declaration and file a certificate of service with the clerk.

(2) For a motion to impose the automatic stay pursuant to § 362(c)(4)(B), the court shall set a hearing with not less than 14 days notice except under

extraordinary circumstance. The mere filing of the motion will not impose the automatic stay. It is incumbent on the debtor or other party in interest to seek an injunction (through the filing of a complaint and motion for a Temporary Restraining Order) to stop any creditor/lienholder collection efforts which may be scheduled to occur before the hearing on the motion to impose the automatic stay.

(3) A party in interest opposing a motion to impose the automatic stay must file a response to the motion. The opponent shall state specifically why the motion should not be granted or state any conditions or limitations that should be imposed upon granting the motion to impose the stay.

(4) In the absence of a timely filed response, and the debtor has filed an appropriate Declaration in support of the Motion, the Court may grant the motion without conducting a hearing. (Amended effective December 1, 2013; amended effective December 1, 2015; amended effective December 1, 2017; amended effective June 1, 2018.)

Rule 4002-1. Duties of Debtor.

(a) *Duties prior to filing petition and schedules.* Prior to filing the petition, schedules and statement of financial affairs, the attorney for the debtor shall review the petition, schedules and statement of financial affairs to determine that:

(1) The current official form has been used;

(2) The petition, schedules and statement of financial affairs have been completed and all information provided by the debtor has been accurately listed;

(3) A statutory citation is stated for all state and federal exemptions claimed;

(4) The debtor and the debtor's attorney have signed the petition at all appropriate places and the debtor has signed the schedules and the statement of financial affairs at all appropriate places; and

(5) A notice of alternative chapters under which an individual debtor(s) may proceed has been properly executed by the debtor(s) and filed with the bankruptcy petition in all individual cases.

(b) *Duties after filing petition and schedules.*

(1) After filing the petition, the attorney shall fully cooperate with the trustee in the performance of the trustee's duties and shall keep the trustee advised of all matters pertinent to the Debtor and the administration of the estate.

(2) If the debtor operates a business, the attorney shall assist the trustee in obtaining all business records, ledgers, journals and cancelled checks of the debtor, all keys to the debtor's business, insurance policies, leases and contracts of the debtor. At the request of the trustee, such items shall be delivered by the debtor to the trustee.

(3) The attorney shall determine whether the debtor wishes to retain any assets subject to a security interest or lien, and, if so, shall contact each such

creditor to determine the fair value of the collateral and whether the creditor desires for the debtor to redeem the collateral or to reaffirm the indebtedness secured by the collateral. The attorney shall determine whether such collateral is exempt property; whether there is any equity in the property for the debtor's estate; whether the property is redeemable under section 722 and whether a reaffirmation is in the best interest of the debtor.

(4) The attorney shall appear at all meetings of creditors, prepared to inform the trustee and/or the presiding officer of any agreements to redeem personal property between the creditors and the debtor.

(5) At the time of the filing of the petition, the attorney shall notify the United States Trustee if the estate of the debtor contains assets that need to be preserved or protected.

(c) *Debtor's duty to provide personal identification upon excused absence from section 341 meeting.* When a debtor seeks to obtain an excused absence from attending the first meeting of creditors, the debtor shall file a motion to be excused from attending the section 341 meeting. In addition, the debtor shall provide to the case trustee the personal identification required by Fed.R. Bankr. P. Rule 4002(b)(1)(A) and (B), but to avoid that personal identification becoming a public record in connection with the seeking of an excused absence of the debtor from attending a section 341 meeting, in lieu of bringing the specified personal identification to the meeting of creditors, the debtor or the attorney for the debtor shall provide to the case trustee under sealed cover: (i) a picture identification issued by a governmental unit or some other personal identifying information that establishes the debtor's identity; (ii) evidence of social security number(s) or a written statement that such documentation does not exist; or (iii) such other personal identification as may be required by the United States Trustee or the case trustee. The debtor's motion shall affirmatively state that this personal identification has been served on the case trustee.

JUDICIAL DECISIONS

Illustrative cases.

Evidence that an attorney forged a debtor's name to a certificate of credit counseling and a Chapter 13 bankruptcy petition and filed those documents without the debtor's knowledge or permission, and that the attorney had a history of recklessly or negligently handling other bankruptcy cases and had been disciplined on several occasions by the Mississippi Supreme Court, was sufficient to support a decision disbarring the attorney from practicing law in the U.S. Bankruptcy Court for the Northern District of Mississippi; the attorney violated Bankr. N.D. & S.D. Miss. R. 4002-1 and 9011-1 by filing documents he knew were not accurate. In re Dobbs, 535 B.R. 675 (Bankr. N.D. Miss. 2015).

Rule 4003-1. Exemptions.

(a) *Claim of exemptions — Amendment to claim of exemptions.* Any amendment to a claim of exemptions pursuant to Fed. R. Bankr. P. Rules 1009 and 4003 shall be filed and served by the debtor on the trustee, the United States Trustee, and all creditors, together with a notice of amendment which states a party in interest may file an objection to the list of property claimed as exempt within the later of (i) 30 days after the meeting of creditors held under section 341(a) is concluded or (ii) 30 days after any amendment to the list or supplemental schedules is filed. The debtor also shall file a certificate of service reflecting that the amendment and notice of amendment were duly served.

(b) *Objecting to a claim of exemptions — Automatic extension of time to file objections to claim of exemptions in event of amendment to schedules to add a creditor.* Unless the court orders otherwise, if the schedules are amended to add a creditor, and the amendment is filed and served either (i) fewer than 30 days prior to the expiration of the time set forth in Fed. R. Bankr. P. Rule 4003(b) for the filing of objections to the list of property claimed as exempt, or (ii) at any time after such filing deadline, the added creditor shall have 30 days from the date of service of the amendment to file an objection to the list of property claimed as exempt. The debtor shall give notice to any added creditor of the objection period provided herein and shall file with the clerk a certificate of service reflecting that such notice was duly given.

Rule 4004-1. Grant or Denial of Discharge.

(b) *Extension of time.* Unless the court orders otherwise, if the schedules are amended to add a creditor, and the amendment is filed and served either (i) less than 60 days prior to the expiration of the time set forth in Fed. R. Bankr. P. 4004(a) for the filing of a complaint or motion objecting to discharge, or (ii) at any time after such filing deadline, the added creditor shall have 60 days from the date of service of the amendment to file the complaint or motion objecting to discharge. Such circumstances shall be deemed to be "cause" for an extension and no motion to extend shall be necessary. (Amended effective January 1, 2012.)

Rule 4007-1. Determination of Dischargeability of a Debt.

(b) *Time for commencing proceeding other than under § 523(c) of the Code - Automatic extension of time to file complaint to determine dischargeability of a debt in event of amendment.* Unless the court orders otherwise, if the schedules are amended to add a creditor, and the amendment is filed and served either (i) less than 60 days prior to the expiration of the time set forth in Fed. R. Bankr. P. Rule 4007 for the filing of a complaint to obtain a determination of the dischargeability of any debt, or (ii) at any time after such filing deadline, the deadline for the filing of a complaint with respect to a claim of such creditor shall be 60 days from the date of service of the amendment upon such creditor. Such circumstances shall be deemed to be "cause" for an extension and no motion to extend shall be necessary.

PART V COURTS AND CLERKS

Rule 5001-1. Clerk's Office Location and Hours.

(d) *General information.* General information regarding the bankruptcy courts and the clerks' offices may be found:

(1) for the Northern District of Mississippi at www.msnb.uscourts.gov

(2) for the Southern District of Mississippi at www.mssb.uscourts.gov

(e) *Communications with clerk's office personnel.* The clerk and the employees of the clerk's office are not permitted to interpret the rules of procedure or to give legal advice. The clerk and the clerk's employees are not responsible for information respecting the rules or law. Though not required to do so, the clerk and the clerk's employees may make an inquiry to a party or counsel with respect to the content, completeness, accuracy or other attribute of an electronic filing. A clerk's response to an inquiry, a clerk's inquiry, or the absence of a clerk's inquiry shall have no legal effect on any party and cannot be cited for any purpose.

(f) *Form of payment.* Documents filed electronically require payment on-line by credit card at the time of filing or as otherwise directed by the Administrative Procedures For Electronic Case Filing established and maintained by the respective clerks. Fees due otherwise are payable by check, money order, cash or pre-approved credit card. Checks or credit cards of the debtor will not be accepted. Checks and money orders shall be made payable to "Clerk, United States Bankruptcy Court" and shall be in the exact amount of said fee or charge. A separate check shall be submitted for each item being filed. Any person or entity presenting a check or credit/debit card which is subsequently dishonored or has payment stopped thereon may be denied, at the discretion of the clerk, the privilege of presenting checks and/or debit/credit cards in the future.

Rule 5003-1. Records kept by the Clerk.

(f) *Other books and records of the clerk.* The clerk is authorized to change the form of the mailing list to meet requirements of any automated case management system hereafter employed by the clerk. The clerk shall give appropriate notice to the bar of any such change in form.

Rule 5005-1. Filing and Transmittal of Papers.

(a) *Filing.*

(1) *Place of filing.* The clerk shall not refuse to accept for filing any petition or other paper presented for the purpose of filing solely because it is not presented in proper form as required by the Federal Rules of Bankruptcy Procedure or these local rules. The clerk may refuse to accept for filing any Hazardous Paper or Thing as provided in Miss. Bankr. L.R. 5005-1(2)(K), which shall be deemed a reason other than improper form.

(2) *Electronic Filing and Signing.*

(A) *Mandatory electronic filing.* The courts for the Northern and Southern Districts have designated all cases to be assigned to the Case Management/Electronic Case Files ("CM/ECF") system. Attorneys who practice in these courts shall register as CM/ECF users. This includes attorneys admitted to the bar of the courts through regular admission or through pro hac vice motion, as well as those attorneys authorized to represent the United States without being admitted to the bar of these courts. United States Trustees, private trustees and others as the courts deem appropriate should also register as CM/ECF users. Registration forms and requirements for CM/ECF are available on the respective courts' websites at the following addresses:

Northern District: http://www.msnb.uscourts.gov
Southern District: http://www.mssb.uscourts.gov

All documents submitted in all cases and proceedings shall be filed electronically, and signed or verified by electronic means, in compliance with the Administrative Procedures For Electronic Case Filing established and maintained by the respective courts. The clerk's offices for the Northern and Southern Districts shall make available the most current version of their Administrative Procedures for Electronic Case Filing on the respective court's website.

Registration as an attorney, private trustee, or United States Trustee CM/ECF user constitutes consent to receive electronic service or notice of documents filed in the CM/ECF system, except with regard to service of a summons and complaint under Fed. R. Bankr. P. 7004 for adversary proceedings. The Notice of Electronic Filing that is automatically generated by the CM/ECF system will constitute service or notice on registered attorney, private trustee, or United States Trustee CM/ECF users. All other parties must be provided service or notice of any pleading or other document electronically filed in accordance with *Federal Rules of Bankruptcy Procedure* and these *Uniform Local Rules.*

(B) *Exceptions from mandatory electronic filing.* Unless the petition or other paper presented to the clerk for filing may be refused by the clerk as provided in Miss. Bankr. L.R. 5005-1(2)(K), an unrepresented individual may file pleadings and documents on paper. In addition, a limited or temporary exception may be allowed on an emergency basis when a registered CM/ECF user is unable to access the system via the internet due to technical failures. The courts may establish other exceptions as deemed appropriate. The Administrative Procedures for Electronic Case Filing for each court should be consulted to determine if and when an exception may be available and the procedure for invoking it.

(C) *Electronic files and duty to confirm.* Unless the petition or other paper presented to the clerk for filing may be refused by the clerk as provided in Miss. Bankr. L.R. 5005-1(2)(K), any document submitted to the clerk in a paper format shall be converted into an electronic format prior to docketing. It is the duty of the filing party to confirm that such document has been accurately submitted into the court's electronic file. The filing party may confirm such submission by viewing the docket for the case on the monitors provided in the office of the clerk during normal business hours. If no challenge regarding the presentation of the document in the court's electronic file is communicated to the clerk within 14 days of the date of docketing, then the document as docketed is conclusively confirmed as the document submitted, unless otherwise ordered by the court.

(D) *Content of pleadings/orders.*

(i) *Motion.* Every motion filed shall have as an attachment a proposed order granting the motion.

(ii) *Responsive pleadings.* Responsive pleadings shall sufficiently identify the underlying motion as well as the docket number of the underlying pleading as shown on the court's official docket entry, i.e., Motion of [name of party] to Lift Stay (Dkt. #23).

(iii) *Proposed orders.* Proposed orders shall sufficiently identify the underlying motion as provided by Miss. L. B. Rule 9004-1 (b).

(E) *Form of judgments/orders.* Judgments and orders submitted must (1) be on a separate electronic page or sheet of paper; (2) have the caption of the case, and where applicable, the style of the adversary proceeding; (3) include in the title of the judgment or order the name and description of the motion; and (4) the docket number of the underlying pleading as shown on the court's official docket entry, i.e., Order Granting Motion of [name of party] to Lift Stay (Dkt. #23).

(F) *Facsimile Documents.* Documents may not be transmitted by facsimile directly to the clerk's office for filing unless specifically authorized by a judge, the clerk, or the judge's or clerk's designee.

(G) *Filing papers — size of papers.* All papers filed with the clerk must be electronically sized to 8 ½ by 11 inches. To the extent possible, all attachments to papers shall be electronically sized to 8 ½ by 11 inches. All papers shall be clearly legible in a font size no smaller than 12 point, without defacing erasures or interlineations, and must be double-spaced, except that quotations, footnotes and legal descriptions may be single-spaced. Additionally, lengthy disclosure statements and plans in Chapter 11 cases may be single-spaced.

(H) *Identification.*

(i) *Counsel identification.* On every pleading and other paper filed with the clerk and on every proposed order or judgment submitted to the court, the attorney shall include the following information: the attorney's name, complete address (including street address and, if applicable, post office box number), telephone number, e-mail address, and Mississippi Bar number (if the attorney is a member of the Mississippi Bar), and, if not, the state and bar number, if any, of the bar in which the attorney is a member and regularly practices.

(ii) *Unrepresented individual identification.* Every pleading and other paper filed with the clerk by an unrepresented individual, and every proposed order or judgment submitted to the court by an unrepresented individual shall include the following information: the individual's complete name, complete address (including street address and, if applicable, post office box number), telephone number and email address, if applicable.

(I) *Titles on papers.* All pleadings, motions, and other papers presented to the clerk for filing must bear clear designations of their content. When a document contains multiple contents (e.g., an answer to a complaint and a counterclaim or crossclaim or a motion and a supporting brief or memorandum), all matters contained in the document must be included in the caption on the first page of the document, except that, if the document contains a Certificate of Service with regard to the document, the Certificate of Service shall not be included in the caption.

(J) *Emergency matters.* A party filing a pleading or motion that requires immediate judicial attention shall contact the courtroom deputy of the bankruptcy judge to whom the matter is assigned for direction.

(K) *Hazardous Papers or Things.* No person or party may file or present to the Court (including Judges, the Clerk, the United States Trustee, or any other Court agency) any Hazardous Paper or Thing without prior leave of court.

(i) *"Hazardous Paper or Thing" Defined.* For purposes of this rule "Hazardous Paper or Thing" includes, but is not limited to, papers or items that are smeared with or contain blood, blood residue, hair, food, feces, urine, or other body fluids, human or animal tissue or infectious material, or contain narcotics, controlled substances, firearms, ammunition, explosives, poisons, dangerous chemicals, or any other substance which may constitute a health hazard.

(ii) *Return or Destruction of Hazardous Paper or Thing.* Any Hazardous Paper or Thing submitted without prior leave of court will not be handled by court personnel and will either be returned to the filer unsolicited or destroyed without prior notice to the filer at the discretion of the clerk or judge.

(iii) *Log of Hazardous Papers or Things.* The clerk shall maintain a log of Hazardous Paper of [sic] Things that are returned to the filer undocketed or destroyed. The log shall include the case number and style, if any, the name of the party submitting the Hazardous Paper or Thing, a brief description of the paper or thing, and the justification for returning or disposing of the paper or thing. The clerk shall notify the judge assigned to the case of actions taken by the clerk. (Amended effective January 1, 2012; amended effective December 1, 2014; amended effective December 1, 2019.)

Rule 5010-1. Reopening Cases.

(a) *Contents of motion.* A motion to reopen a case pursuant to Fed. R. Bankr. P. Rule 5010 shall be in writing. In a chapter 7, 12, or 13 case, the motion to reopen also must state whether the movant believes that a trustee is necessary to protect the interests of creditors and the debtor or to insure efficient administration of the estate.

(b) *Service.* A motion to reopen a case pursuant to Fed. R. Bankr. P. Rule 5010 shall be served upon the debtor, if applicable, the case trustee, any affected party and the United States Trustee.

(c) *Hearing.* Whether the court conducts a hearing or provides notice and a hearing to any creditors or parties in interest other than those parties specified in Miss. Bankr. L.R. 5010-1 (b) prior to acting on a motion to reopen a case is within its discretion.

(d) Upon the filing of a motion to reopen a case pursuant to Fed. R. Bankr. P. 5010 for the purpose of filing the debtor's post-petition financial management certification and for the entry of discharge, the movant shall provide notice regarding the 21 day objection period to all parties listed on the most recent CM/ECF creditor mailing matrix. (Amended effective January 1, 2012.)

Rule 5011-1. Withdrawal of Reference and Abstention from Hearing or Proceeding.

(a) *Withdrawal of reference.*

(1) *By party.* A motion to withdraw the reference and any responses thereto shall be filed under the style and number of the bankruptcy case or adversary proceeding in which reference is sought to be withdrawn and shall be filed with the clerk of the bankruptcy court and be accompanied by the prescribed filing fee.

(2) *By bankruptcy judge.* A request by a bankruptcy judge for withdrawal of the reference of a case or a proceeding automatically referred to the bankruptcy court may be made sua sponte at any time.

(3) *Contents of motion.* A motion to withdraw the reference shall conspicuously state on the face of the motion, "RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE," and shall refer to and comply with 28 U.S.C. §157(d) and Fed. R. Bankr. P. Rule 5011(a). The motion shall list all pleadings which may be relevant to the disposition of the motion, including docket entry numbers.

(4) *Response.* Any response or objection to a motion for withdrawal of the reference shall be filed within 14 days of the date of service of such motion.

(5) *Transmittal to the district court.* After the expiration of the 14-day response period established by Local Rule 5011-1(a)(4), the clerk shall promptly transmit the motion, any responses and attached exhibits to the clerk of the district court.

PART VI COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6007-1. Abandonment or Disposition of Property.

(a) *Notice of proposed abandonment or disposition; objections; hearing.*

(1) *No asset notice.* In a chapter 7 case in which a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines (i.e., the 341 notice) containing language advising parties not to file a proof of claim is issued, and is not superseded by a Notice to File Proof of Claim, the trustee or debtor is relieved of the requirement of giving notice of abandonment or disposition of property under Fed. R. Bankr. P. Rule 6007(a).

(2) *Property value.* The trustee or debtor is relieved of the notice requirement imposed by Fed. R. Bankr. P. Rule 6007(a), when the proposed abandonment relates to scheduled property which the trustee determines is burdensome to the estate or is of inconsequential value to the estate.

(b) *Motion by party in interest.* An abandonment of property, by itself, does not affect the automatic stay. Therefore, when a motion which includes a request to have the trustee abandon the property from the estate pursuant to section 554(b) is filed, the moving party ordinarily should also seek relief from the automatic stay pursuant to section 362(d). If relief from the automatic stay is sought, the moving party shall comply with the requirements of Miss. Bankr. L.R. 4001-1(a)(1)(B).

(c) *Agreed orders.* If the creditor, the debtor(s) and the trustee agree as to relief from the automatic stay as well as abandonment, then the submission of an agreed order shall be governed by Fed. R. Bankr. P. Rule 4001(d) and Miss. Bankr. L.R. 4001-1(a)(1)(D).

PART VII ADVERSARY PROCEEDINGS

Rule 7008-1. General Rules of Pleading — Statement Regarding Consent to Entry of Final Orders or Judgment by Bankruptcy Court in Original Pleading.

In an adversary proceeding before a bankruptcy judge, in addition to the statements required by Fed. R. Bankr. P. 7008, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court. If no such statement is included, the pleader shall have waived the right to contest the authority of the court to enter final orders or judgment. (Effective December 1, 2015.)

Rule 7012-1. Defenses and Objections — When and How Presented — By Pleadings or Motion — Motion for Judgment on the Pleadings — Statement Regarding Consent to Entry of Final Orders or Judgment by Bankruptcy Court in Responsive Pleading.

(a) The procedures set forth in Miss. Bankr. L.R. 7056-1 for filing or responding to a motion for summary judgment shall also be applicable to a motion to dismiss.

(b) In an adversary proceeding before a bankruptcy judge, a responsive pleading shall contain a statement that a pleader does or does not consent to entry of final orders or judgment by the bankruptcy court. If no such statement is included, the pleader shall have waived the right to contest the authority of the court to enter final orders or judgment. (Amended effective December 1, 2015.)

Rule 7015-1. Motions for Leave to Submit Amended and Supplemental Pleadings.

If leave of court is required under Fed. R. Bankr. P. 7015, the proposed amended or supplemental pleading must be an exhibit to a motion for leave to file the pleading, and, if the motion is granted, the movant must file the amended or supplemental pleading as a separately docketed item within seven (7) days from entry of the order granting the motion. (Effective December 1, 2019.)

Rule 7016-1. Pre-trial Procedure; Formulating Issues.

The bankruptcy court shall decide, on the court's own motion or on the timely motion of a party in interest, whether to hear and determine the proceeding, issue proposed findings of fact and conclusions of law, or take some other action.

(a) *Case management, status and scheduling conferences in chapter 11 cases.* The court on its own motion or on the motion or request of a party in interest may conduct case management, status and scheduling conferences at such times during a case as will further the expeditious and economical resolution of the case. At the conclusion of each such conference, the court may enter case management, scheduling or pre-trial orders as may be required. Such orders may establish notice requirements, set dates on which motions and proceedings will be heard, establish procedures (including briefing schedules) and address such other matters as may be appropriate. This rule shall be applicable in matters contemplated under Fed. R. Bankr. P. Rule 9014.

(b) *Pre-trial conference.* A pre-trial conference may be held if ordered by the court.

(1) *Request for a pre-trial conference.* Any party may request that a pre-trial conference be held following the completion of discovery, as provided in the scheduling order, by filing a motion with the clerk.

(2) *Failure to appear at pre-trial conference or to cooperate.* Unless otherwise permitted by the court under Miss. Bankr. L.R 7016-1(c), all counsel who will conduct the trial are required to appear before the court for the pre-trial conference. Should an attorney for a party fail to appear or to cooperate in the preparation of the pre-trial order, the court, in its discretion, may impose sanctions, such as costs and fines. The court, nevertheless, may hold a pre-trial hearing and enter an appropriate judgment or order.

(3) *Attorney conference prior to pre-trial conference.* Before the pre-trial conference, attorneys for all of the parties and any unrepresented individual shall confer and cooperate to permit each party to pre-mark all exhibits and to prepare a proposed pre-trial order for the court, unless a pretrial order is waived by the court.

(4) *Pre-trial order.* The parties shall comply with the requirements and procedures established by each judge with respect to the preparation, execution, submission and service of any pretrial order.

(c) *Telephonic Fed. R. Civ. P. 16 scheduling conference or pre-trial conference.* For cause shown, and at least 2 days before the time scheduled for a scheduling conference or pre-trial conference, any party to the conference may request that the conference be conducted by telephone or that the party be permitted to participate by telephone. Such request may be made by telephone to the courtroom deputy and shall be communicated contemporaneously to other counsel known to be involved in the hearing or conference. Any party objecting to the request shall promptly advise the court and other counsel. (Amended effective December 1, 2015.)

Rule 7026-1. General Provisions Governing Discovery.

(a) *Responses to discovery requests.* When answering interrogatories, requests for production, and requests for admission, the replying party shall, as part of the answer, set forth immediately preceding the answer the question or request to which such answer is given. Failure to comply with this subdivision may result in the imposition of sanctions upon motion by the party propounding the discovery.

(b) *Service and non-filing of discovery.* Except as provided in subdivision (c) of this rule, unless the court orders otherwise, transcripts of depositions, exhibits to depositions, interrogatories, answers to interrogatories, document requests, responses to document requests, requests for admissions, and responses to requests for admissions shall not be filed with the clerk.

(c) *Filing of discovery needed for trial or dispositive motion on appeal.* When discovery or disclosure material not on file with the clerk is needed for a trial, a dispositive motion, or an appeal, the necessary portion of that material may be filed with the clerk.

Rule 7030-1. Depositions Upon Oral Examination.

(a) *Who may attend deposition.* A deposition may be attended only by (i) the deponent, (ii) counsel for any party to the adversary proceeding and members and employees of their firms, (iii) a party who is a natural person, (iv) an officer or employee of a party who is not a natural person designated as its representative by its counsel, (v) counsel for the deponent, (vi) any consultant or expert designated by counsel for any party, (vii) the United States Trustee, (viii) counsel for any trustee, (ix) counsel for the debtor, (x) counsel for any official committee and (xi) counsel for any party providing postpetition financing to the debtor under sections 363 or 364.

(b) *Order of confidentiality.* If a confidentiality order has been entered, any person who is not authorized under the order to have access to documents or information designated confidential shall be excluded from a deposition upon request by the party who is seeking to maintain confidentiality while a deponent is being examined about any confidential document or information.

(c) *Confidentiality of documents.* If any documents are deemed confidential by the producing party and the parties have not been able to agree on an appropriate protective order, until a protective order is in effect, disclosure should be limited to members and employees of the firm of trial counsel who have entered an appearance, and, where appropriate, have been admitted *pro hac vice*. Such persons are under an obligation to keep such documents confidential and to use them only for purposes of litigating the case.

(d) *Reasonable notice of deposition.* Unless otherwise ordered by the court, "reasonable notice" for the taking of depositions under Fed. R. Bankr. P. Rule 30(b)(1) shall not be less than 14 days. This rule does not abrogate any requirement contained within Fed. R. Bankr. P. Rule 9016 or Fed. R. Civ Proc. Rule 45(c)(2)(B).

Rule 7033-1. Interrogatories to Parties.

(a) *Number of interrogatories.* Interrogatories propounded by any party to another party shall be limited to 1 set of questions, not to exceed 25 in number, except by order of the court for good cause shown. In computation of the number of questions propounded, each subpart of a question shall be counted as a question.

(b) *Inspection of documents.* If a party elects to produce business records pursuant to Fed. R. Civ. P. Rule 33(d) and Fed. R. Bankr. P. Rule 7033 in lieu of answering the interrogatory, unless the court orders otherwise, the documents may be produced or made available for inspection and copying within 14 days after service of the answers to interrogatories or on a date agreed upon by the parties. (Amended effective December 1, 2015.)

Rule 7037-1. Failure to Make Disclosure or Cooperate in Discovery; Sanctions.

(a) *Duty to confer; certificate of good faith.* Prior to service of a motion to compel discovery for whatever reason, all counsel shall be under a duty to confer in good faith to determine to what extent discovery disputes can be resolved before presenting the issue to the bankruptcy judge. No such motion shall be heard by the bankruptcy judge unless counsel for the moving party shall incorporate in the motion a certificate that counsel has conferred in good faith with opposing counsel in an effort to resolve the dispute and has been unable to do so.

(b) *Motions raising issues concerning discovery — requirements.* Motions raising issues concerning discovery, in accordance with Fed. R. Civ. P. Rules 33, 34, 36 and 37, as adopted by Fed. R. Bankr. P. Rules 7033, 7034, 7036 and 7037, shall quote verbatim each interrogatory, request for production or request for admission to which the motion is addressed, and shall state (i) the specific objection, (ii) the grounds assigned for the objection (if not apparent from the objection itself), and (iii) the reasons assigned as supporting the motion, and shall be written in immediate succession to one another. Such objections and grounds shall be addressed to the specific interrogatory, request for production or request for admission and may not be general in nature.

Rule 7054-1. Judgments; Costs.

(b) *Costs; Attorney's Fees.*

(2) *Attorney's Fees.*

(A) *Content of Motion.* In addition to those matters required by Fed. R. Civ. P. 54(d)(2)(B), a motion for attorney's fees must include an itemization and description of the legal work performed and all costs sought to be charged as part of the attorney's fee.

(B) *Attorney Affidavit.* Each motion must be accompanied by an affidavit from the attorney responsible for the billings in the case authenticating the information contained in the motion and confirming that the bill has been reviewed and edited and that the fees and costs charged are reasonable and necessary.

(C) *Response.* Any response in opposition must be filed no later than 14 days after the motion for attorney's fees is filed. The response shall set forth the specific charges that are disputed and state with reasonable particularity the basis for such opposition.

(D) *Hearing.* In its discretion, the court may decide the motion on the papers or set the matter for hearing. (Effective December 1, 2015.)

Rule 7055-1. Default - Procedure.

Pursuant to Fed. R. Bankr. P. Rule 7055 and Fed. R. Civ. P. Rule 55, if a party is entitled to a default judgment, the party must file with the clerk the following: an Application to Clerk for Entry of Default and Supporting Affidavit (including proof of service of process), an Entry of Default, a Request for Court's Entry of Default Judgment, and a proposed Default Judgment to be entered by the court.

Rule 7056-1. Summary Judgment — Form and substance of the motion.

Any motion for summary judgment must comply with the following requirements. Any motion that does not comply may be denied immediately without requiring a response from the non-moving party.

(1) *If movant has the burden of proof on the issue upon which summary judgment is sought.*

(A) *Movant shall:*

(i) List and separately number each material fact in the prima facie claim or affirmative defense upon which summary judgment is sought, with the understanding that if the court finds a genuine issue as to any one of the facts listed, summary judgment will be denied.

(ii) For each material fact listed, cite the factual authority. (E.g., "Paragraph 3 of Complaint, admitted in Defendant's Answer," "page 12 of John Doe's Deposition," "Defendant's Request for Admission No.4, admitted," "Paragraph 5 of Affidavit of John Doe.")

(iii) Attach as exhibits to the motion the factual authorities relied upon for establishment of the material facts. (E.g., Supporting Affidavit, extracts of depositions or Requests for Admission, etc. Do not attach entire depositions or pleadings, just the pertinent portions relied upon.)

(B) *Respondent shall:*

(i) List any material facts recited by the movant about which the respondent contends there is a genuine issue of fact and cite and attach the factual authorities that create the issue of fact.

(ii) Cite any additional material facts (a) that the respondent contends are part of movant's prima facie case, but were not included in movant's list of the facts constituting the prima facie case, and (b) which the respondent contends established. For each such fact either (a) cite and attach any factual authorities which the respondent contends creates a genuine issue as to that fact or (b) assert that the movant has the burden of persuasion on that fact and has no evidence to support the fact.

(iii) To the extent a respondent relies on any affirmative matter upon which it has the burden of persuasion to counter the motion for summary judgment, then the respondent must follow the procedures set forth in Paragraphs (1)(A)(i)-(iii) above.

(2) *If movant does not have the burden of persuasion on the issue upon which summary judgment is sought.*

(A) *Movant shall:*

(i) List the material facts that the movant contends constitute the non-moving party's prima facie case.

(ii) Designate which facts in the non-moving party's prima facie case the movant contends do not exist and (a) cite and attach the factual authorities the movant contends establish the non-existence of each designated fact and/or (b) assert that there is no evidence to support the existence of the designated fact.

(B) *Respondent shall.* For each material fact designated by the movant as being part of the respondent's prima facie case and claimed by the movant that there is evidence of its non-existence and/or no evidence of its existence, the respondent shall either (a) cite and attach any factual authorities supporting the existence of the fact or (b) deny that the respondent has the burden of persuasion to establish this fact as part of the respondent's prima facie case.

(3) *Briefs.*

(A) Each motion for summary judgment must be accompanied by a memorandum brief.

(B) The respondent shall file its response and memorandum brief within 21 days of service of the motion for summary judgment and supporting memorandum.

(C) The movant may file a reply within 14 days after the response is served. (Amended effective January 1, 2012.)

PART VIII APPEALS TO DISTRICT COURT

Rule 8003-1. Appeal as of Right — How Taken; Docketing the Appeal.

(c) *Serving the Notice of Appeal.*

(1) Simultaneously with the filing of any notice of appeal or notice of cross-appeal, with respect to an appeal in which any official committee in the bankruptcy case from which such appeal originated is not a named party to the appeal, the party filing such notice of appeal or notice of cross-appeal shall serve a copy of such notice on counsel to any such official committee and shall file with the notice of appeal or notice of cross-appeal a certificate of service.

(2) Any official committee wishing to be placed on the service list for any appeal for the purpose of receiving notices and copies of papers served shall, within 21 days of service of the notice of appeal or the notice of cross-appeal, file with the bankruptcy clerk a request for notice. Such notice shall become

part of the record for the appeal to be transmitted to the clerk of the district court by the clerk of the bankruptcy court.

(3) Nothing contained herein shall affect or in any way determine any official committee's right to intervene in any appeal or cross-appeal or its obligation to seek leave to intervene in any appeal or cross-appeal if such official committee is not a named party to such appeal or cross-appeal. (Renumbered and amended effective December 1, 2015.)

PART IX GENERAL PROVISIONS

Rule 9004-1. General Requirements of Form.

(b) *Caption.* All documents filed with the clerk that relate to a document previously filed and docketed shall sufficiently identify the related document and state its docket number, if available. The form of the reference to the docket number of the related document shall be "(Dkt. # ____)."

Rule 9010-1. Representations and Appearances; Powers of Attorney.

(b) *Notice of appearance.*

(1) *Pro hac vice.* A non-resident attorney who is not a member of the Mississippi Bar and is not authorized to practice before the Mississippi Supreme Court and is not admitted to practice in the United States District Courts for the Northern or Southern Districts of Mississippi may apply to be admitted *pro hac vice* by comity to practice in a particular civil action in the court upon compliance with the following conditions:

(A) *File certificate.* The applicant must submit with the motion for *pro hac vice* admission a certificate from the United States District Court or the highest state court of the applicant's jurisdiction, showing that the applicant is duly authorized to practice in and is in good standing with that court.

(B) *Association and duties of local counsel.* The applicant must associate a member of the bar of the court in the particular bankruptcy case for which the applicant seeks admission. The initial motion shall be filed by an attorney admitted to practice before the court. Local counsel associated with an attorney admitted *pro hac vice* must comply with the Association and Duties of a Resident Attorney provision (L. U. Civ. R. 83.1(d)(3)) of the Local Uniform Civil Rules of the United States District Courts for the Northern District and the Southern District of Mississippi.

(C) *Certification of familiarity with local rules.* The applicant must certify that the applicant has read and is familiar with the Uniform Local Rules of the United States Bankruptcy Courts for the Northern and Southern Districts of Mississippi.

(2) *Exceptions to requirement of* pro hac vice *admission*

(A) *For attorneys.* An attorney is not required to be admitted pro hac vice in order to:

(i) File an entry or notice of appearance

An attorney may file an entry of appearance or notice of appearance and request for service without being admitted *pro hac vice* and such an attorney will be added to the mailing list to receive such notices and must receive copies of all documents required to be served on all creditors and parties in interest pursuant to Fed. R. Bankr. Pro. Rule 2002, unless otherwise ordered by the court. Any entry of appearance or notice of appearance filed with the clerk must be served upon the debtor, the trustee, the United States Trustee, and any entity having previously filed a notice or entry of appearance.

(ii) File a proof of claim

(iii) Attend the section 341 meeting of creditors; and

(iv) File a ballot in a chapter 11 case.

(B) *Pro se Individuals.* An individual may represent himself or herself in any bankruptcy case.

(C) *Corporations or other business entities.* A corporation, partnership, trust, or other business entity, other than a sole proprietorship, may appear and act without counsel in a case or proceeding before this court only for the following purposes:

(i) File a proof of claim;

(ii) Attend the section 341 meeting of creditors;

(iii) File a ballot in a chapter 11 case; or

(iv) File a reaffirmation agreement.

For all other purposes, such entity may appear and act only through an attorney.

(D) *Government attorneys.* Any attorney not admitted in the bankruptcy court or district court but who is admitted and is in good standing in another United States District Court may appear representing the United States (or any department, agency, or employee thereof) or any state, county or municipality (or any department, agency, political subdivision or employee thereof) may appear and participate in particular cases, actions or proceedings before the court on behalf of such entity in the attorney's official capacity, and any attorney so appearing is subject to all of the rules of the court.

(E) *Child support creditors or their representatives.* Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy case or proceeding in any bankruptcy court or district court of the United States if such creditors or representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(3) *Filing of pleadings.* When a party appears by attorney, every pleading or paper filed on behalf of the represented party shall be signed by at least one attorney of record in the case, which may include any attorney admitted *pro hac vice.*

(4) *Access to Case Management — Electronic Case Filing System.*

(A) *Suspension of Access — Lack of Authorization to Appear.* The clerk may suspend access to the CM/ECF system upon receipt of notification that an attorney is not authorized to appear or act in this court. The clerk may give notice to parties in affected cases when an attorney's access to the system has been suspended.

If such attorney or other registered user subsequently becomes qualified to appear in this court, such party may be required to reapply by registering as a CM/ECF user under Miss. Bankr. L.R. 5005-1. Such registration by an attorney will require a certification that such attorney is in good standing with the state bar and this court.

(B) *Cross-Certification.* The clerk may establish procedures for cross-certifying attorneys from other jurisdictions for the use of and access to the Case Management — Electronic Case Filing (CM-ECF) system for any case in which such attorneys are appearing.

(5) *Substitution; withdrawal.*

(A) *Substitution.* If a party in an adversary proceeding or a debtor in any case wishes to substitute attorneys, a substitution of counsel document signed by the original attorney, if available, and the substituted attorney shall be filed. If a trustee, debtor or official committee wishes to substitute attorneys or any other professional whose employment was subject to approval by the court, a motion for retention of the new professional must also be filed.

(B) *Withdrawal.* When an attorney enters an appearance in a bankruptcy case or an adversary proceeding, the attorney shall remain as counsel of record until released by order of the court. An attorney may be released only on motion duly noticed to all parties, including the client, together with a proposed order authorizing counsel's withdrawal. The Notice to one's client shall be by first class mail addressed to the client's last known address.

(C) *Service.* Substitutions and motions for withdrawal under this local rule shall be served as follows:

(i) in an adversary proceeding, on all parties to the proceeding; and

(ii) in a bankruptcy case, on the debtor, the United States Trustee, the case trustee and all affected parties, unless otherwise ordered by the court.

(D) *Effect of failure to comply.* Until an Order is entered allowing the substitution or withdrawal under sections (a) or (b) above, the original attorney remains the client's attorney of record. (Amended effective December 1, 2014; amended effective December 1, 2018.)

JUDICIAL DECISIONS

Assistance of counsel required for corporate defendants.
Pro hac vice admission.

Assistance of counsel required for corporate defendants.

Corporate defendants were not permitted to appear at trial without the assistance of counsel. While an individual defendant maintained repeatedly in his pleadings that he was the representative of the corporate defendants, he could not represent them at trial, as he was not a licensed attorney. Johnson v. Cmty. Home Fin. Servs. (In re Cmty. Home Fin. Servs.), — Bankr. —, 2018 Bankr. LEXIS 557 (Bankr. S.D. Miss. Feb. 27, 2018).

Pro hac vice admission.

Where only one attorney signed an 11 U.S.C.S. § 523(a)(2)(A) complaint in compliance with Bankr. N.D. & S.D. Miss. R. 5005-1(a)(2)(A) by having an "s" mark appear before his name, and where the signing attorney did not satisfy the requirements for pro hac vice admission in Bankr. N.D. & S.D. Miss. R. 9010-1(b)(1), or the admission rules for the district court in N.D. & S.D. Miss. R. 83.1, then he was not authorized to practice law in the bankruptcy court, and his signature on the complaint did not satisfy the requirements of Fed. R. Bankr. P. 9010 and 9011. However, the debtor's motion to strike pleadings and dismiss the adversary was denied because under the remedial clause of Rule 9011, the attorney was entitled to remedy those errors, as the problem with the signature was not sufficiently called to the attention of the creditor or the attorney until the hearing on the debtor's motion, when the court clarified the law regarding admission to practice, as the absence of an explicit statement in the Local Rules regarding the requirements for general admission to practice before the bankruptcy court warranted a finding that the law regarding admission to practice was ambiguous and vague. Knesel v. Davis (In re Davis), — Bankr. —, 2011 Bankr. LEXIS 1751 (Bankr. S.D. Miss. May 10, 2011).

Requirements that had to be satisfied for an attorney to be generally admitted to practice in the United States Bankruptcy Court for the Southern District of Mississippi were not explicitly addressed in the Local Rules. Instead, the rules appeared to presume that every attorney had an innate knowledge and understanding of the following principles: (1) each bankruptcy court was a unit of a United States District Court under 28 U.S.C.S. § 151, and thus, in order to qualify to practice in the bankruptcy court, an attorney had to satisfy the requirements for admission to practice in the district court; and (2) an additional, permissible method to gain authorization to practice in the court was by complying with the requirements for pro hac vice admission in Bankr. N.D. & S.D. Miss. R. 9010-1(b)(1). Knesel v. Davis (In re Davis), — Bankr. —, 2011 Bankr. LEXIS 1751 (Bankr. S.D. Miss. May 10, 2011).

Rule 9011-1. Signing of Papers; Representations to the Court; Sanctions; Verifications and Copies of Pages.

(a) *Signature.*

(1) All filed pleadings signed by an attorney shall contain the attorney information required by Miss. Bankr. L.R. 5005-1 (a)(2)(H). All documents filed and signed by an unrepresented individual shall contain the party's name, complete address (including street address and, if applicable, post office box number), telephone number, and, if available, e-mail address. Furthermore, every attorney, as well as every litigant proceeding without legal counsel, has a continuing obligation to notify the clerk of any changes of address and contact information.

(2) The filing of any document by using a login and password issued by the clerk shall constitute the attorney's signature for purposes of signing the document under Fed. R. Bankr. P. Rule 9011(a) and any other applicable authority relating to signatures. The attorney's name under whose login and password the document is submitted must be displayed as an image of a signature or by an "/s/" and typed in the space where the signature would otherwise appear (e.g., /s/ Jane Doe). No person shall knowingly use or cause another person to use the password of an attorney unless such a person is duly authorized to do so by the attorney.

JUDICIAL DECISIONS

Illustrative cases.

Evidence that an attorney forged a debtor's name to a certificate of credit counseling and a Chapter 13 bankruptcy petition and filed those documents without the debtor's knowledge or permission, and that the attorney had a history of recklessly or negligently handling other bankruptcy cases and had been disciplined on several occasions by the Mississippi Supreme Court, was sufficient to support a decision disbarring the attorney from practicing law in the U.S. Bankruptcy Court for the Northern District of Mississippi; the attorney violated Bankr. N.D. & S.D. Miss. R. 4002-1 and 9011-1 by filing documents he knew were not accurate. In re Dobbs, 535 B.R. 675 (Bankr. N.D. Miss. 2015).

Rule 9013-1. Motions; Form and Service.

(a) *Rule or statutory basis.* Each motion shall specify the rules and statutory provisions upon which it is predicated.

(b) *Service of motions and responses; limited notice.*

(1) When a motion or response is filed, at a minimum, the following persons or entities listed in section (2)(b) below shall be served unless otherwise specifically provided by the Federal Rules of Bankruptcy Procedure, these Local Rules, or by order of the court.

(2) When limited notice is allowed by the Federal Rules of Bankruptcy Procedure or these Local Rules, it shall be in accordance with Miss. Bankr. L.R. 2002-1(m).

(A) In a chapter 7 case, notice shall be given to the debtor, the trustee, the United States Trustee, any court-approved committees, the counsel for each of the foregoing entities, and any other entities affected by the relief requested.

(B) In a chapter 11 case, to the extent limited notice is permitted under the Bankruptcy Rules, notice shall be given to the debtor, any court-approved committee, the twenty largest unsecured creditors if no official committee of unsecured creditors has been appointed, any chapter 11 trustee, the counsel for each of the foregoing entities, all parties who have filed a notice of entry of appearance, the United States Trustee, and any other entities affected by the relief requested.

(C) In a chapter 12 or 13 case, notice shall be given to the debtor, debtor's counsel, the chapter 12 or 13 trustee, the United States Trustee and any other entities affected by the relief requested.

(D) Whenever a pleading governed by Miss. Bankr. L.R. 9013-1 is to be served on the United States, or an officer or agency thereof, the service provisions of Fed.R. Bankr. P. Rule 7004(b)(4)-(b)(5) apply.

(c) *Objections.* Except for motions made in open court, any objection to a motion shall be made in writing and conform to Miss. Bankr. L. R. 9004-1(b), be filed pursuant to Miss. Bankr. L. R. 5005-1(a)(2)(D) and be served as provided in Miss. Bankr. L. R. 9013-1(b)(1).

(d) *Failure to file responsive pleading.* If a response is not timely filed, the court may enter an order granting the relief requested prior to hearing and may remove the motion or application from the court calendar unless leave to file a late response is granted.

(e) *Submitting of order or judgment.* After hearings held in the court, the prevailing party shall submit an order or judgment, consistent with the court's ruling, within 14 days of the hearing or such other time as the court may direct, for the court's approval and entry. For settlement announcements prior to a scheduled hearing date, the related order or judgment shall be submitted within 14 days after the scheduled hearing date or such other time as the court may direct. Except as otherwise directed by the court, prior to submitting the order or judgment to the court, the prevailing party shall submit to all parties appearing at the hearing who filed responsive pleadings related to the subject of the motion or hearing the order for their signature indicating approval as to form. Parties to whom the order or judgment has been submitted shall promptly sign it or promptly contact the party who drafted it to express any objection to the form of the proposed order or judgment. The parties shall attempt to resolve any differences in the form of the order or judgment before submitting competing orders or judgments to the court.

(f) *Expedited or emergency matters.*

(1) *Motion for expedited or emergency hearing.* A request for hearing on an expedited or emergency basis shall be made by contacting the courtroom deputy, stating the reason the matter should be considered on an expedited or emergency basis. Counsel for the movant shall immediately thereafter notify counsel for the respondent of the emergency hearing setting. "Expedited basis" or "emergency basis" is defined as any hearing within 14 days of the filing of the motion on which the emergency hearing is requested.

(2) *Response to expedited or emergency matters.* A response to a motion or application set on an expedited or emergency basis and/or seeking expedited or emergency hearing may be filed until and including the date of the hearing, unless otherwise ordered by the court. The respondent must serve the response on the opposing counsel as soon as possible by facsimile and/or email and must file the original response with the court in accordance with Miss. Bankr. L. R. 9013-1(c).

(3) *First Day Motions in Chapter 11 Cases.* First Day Motions as defined in subpart (g) which are of an expedited or emergency nature shall comply with this rule.

(g) *First Day Motions in Chapter 11 Cases. Procedure.*

(1) *Definition.* Any motion or application in which the debtor requests a hearing or the entry of an order on an expedited basis as defined in Miss. Bankr. L.R. 9013-1(f) prior to the earlier of the creditors' committee formation meeting or the 11 U.S.C. § 341 meeting of creditors ("First Day Motions") shall be governed by this Local Rule.

(2) *Scope of Relief Requested.* Requests for relief under this rule shall be confined to matters of genuine emergency required to preserve the assets of the estate and to maintain ongoing business operations and such other matters as the Court may determine appropriate.

(3) *Notice to the United States Trustee and Certain Other Parties.* Once a petition is filed and the case is assigned to a bankruptcy judge, counsel for the debtor shall contact the judge's chambers to schedule a hearing on those applications and motions as soon as reasonably possible. Counsel for the debtor shall prepare and file a notice of hearing identifying the matters on which the debtor asks to be heard under this rule. The debtor shall serve the notice of hearing, all motions, applications, and proposed orders (as required

by Miss. Bankr. L.R. 5005-1(a)(2)(D)(i)) to be heard (in substantially final form) upon the United States Trustee, the creditors included on the list filed under Fed. R. Bankr. P. 1007(d) and any party directly affected by the relief sought in such applications and motions, at least twenty-four (24) hours in advance of a hearing on such applications, motions, and proposed orders, unless otherwise ordered by the Court, and shall file a certificate of service to that effect within forty-eight (48) hours.

(4) *Notice of Entry of Orders.* Within forty-eight (48) hours of the entry of an order entered under this rule ("First Day Order"), the debtor shall serve copies of all motions and applications filed with the Court as to which a First Day Order has been entered, and any First Day Orders entered, on those parties referred to in Miss. Bankr. L.R. 9013-1(g)(3), and such other entities as the court may direct, and shall file a certificate of service to that effect within forty-eight (48) hours. (Amended effective January 1, 2012; amended effective December 1, 2015.)

Rule 9014-1. Contested Matters.

(a) *Motion.*

(1) If a matter requires a hearing, notice of the setting shall be accomplished by the clerk, unless otherwise directed by the court.

(2) All Financing Motions as defined in Miss. Bankr. L.R. 4001-1(b)(1)(A) that are not First Day Motions as defined in Miss. Bankr. L.R. 9013-1(g)(1) or a motion for expedited or emergency hearing under Miss. Bankr. L.R. 9013-1(f) are otherwise governed by this rule and any other rules specific to the relief sought.

(3) Motions initiating contested matters which request expedited or emergency hearings shall comply with Miss. Bankr. L.R. 9013-1(f).

(c) *Application of Part VII rules.* The court may order Miss. Bankr. L. R. 7016-1 to apply to contested matters. Unless ordered otherwise, to the extent that Part VII of the Federal Rules of Bankruptcy Procedure are applicable to contested matters pursuant to the Fed. R. Bankr. P. Rule 9014(c), the corresponding Mississippi Bankruptcy Local Rules for Part VII shall apply to contested matters. (Amended effective December 1, 2015.)

Rule 9015-1. Jury Trials.

(c) *Withdrawal of the reference in the event of non-consent.* To the extent a bankruptcy court has been authorized by the district court to conduct jury trials, if the bankruptcy court grants the jury demand under Fed. R. Bankr. P. Rule 9015(a) and a party has refused consent to the bankruptcy court's conduct of the jury trial, then any party may file a motion to withdraw the reference with the district court within 14 days of the entry of an order granting the jury demand in accordance with Miss. Bankr. L.R. 5011-1, attaching a copy of the bankruptcy court's order and a copy of the party's refusal to consent. If no party timely files such a motion to withdraw the reference, the bankruptcy court will strike the jury demand.

(d) *Application of the district court local rules relating to jury trials.* To the extent the right for a bankruptcy court to conduct jury trials has been authorized by the district court, all rules relating to the conduct of a jury trial in the district court shall apply to the conduct of such trials in bankruptcy court.

Rule 9017-1. Exhibits.

(a) *Custody and Disposition of Exhibits.* All exhibits, including models, diagrams, or other material items, filed in a proceeding must be physically removed by the parties who filed them, in the event no appeal is perfected, within sixty days from the date of final disposition of the case by this court, or, in the event an appeal is perfected and thereafter disposed of, within thirty days after receipt of the judgment, other process, or certificate disclosing disposition of the case by that court. In the event the exhibits are not removed from the custody of the clerk within the required time, the clerk may destroy or otherwise dispose of the exhibits.

(b) *Custody of Sensitive Exhibits.* Sensitive exhibits include, but are not necessarily limited to, drugs, weapons, currency, pornography, and items of high monetary value. Sensitive exhibits offered or received in evidence will be maintained in the custody of the clerk of court during the hours in which the court is in session. At the conclusion of each daily proceeding and at the noon recess, the clerk will return all sensitive exhibits to the offering counsel or party, who must then be responsible for maintaining custody and the integrity of such exhibits until the next session of court, at which time they must be returned to the clerk, unless otherwise ordered by the court. Following the return of a verdict in a jury case, or the entry of a final order in a non-jury case, sensitive exhibits will be handled or disposed of in the same manner as other exhibits under this rule. (Effective December 1, 2013.)

Rule 9018-1. Secret, Confidential, Scandalous, or Defamatory Matters.

(a) Documents or proceedings may be sealed only by order of the court.

(b) Documents shall be maintained under seal according to such procedures as may be directed by the clerk.

(c) The order sealing the document or proceedings shall identify who shall have access to sealed documents and terms and conditions of the maintenance and the ultimate disposition of same.

(d) The order sealing the documents shall provide for the duration the documents are to be sealed. If no duration is stated, or if no ultimate disposition is provided in the sealing order, any court records and documents filed under seal shall be returned to the party who placed the records or documents under seal, or if no such party is available, such documents and records shall be maintained under seal for ten years after closing of the bankruptcy case, after which time such records, unless released by an order of the court prior to that time, may be destroyed.

Rule 9019-1. Compromise and Arbitration.

Introduction and Purpose. Alternate dispute resolution ("ADR") has the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes, and greater efficiency in achieving settlements.

These rules, modeled largely after the ADR provisions in the Local Rules of the United States District Courts for the Northern and Southern Districts of Mississippi, are designed to provide access to modern ADR settlement techniques and to encourage mutually satisfactory resolutions of disputes in all stages of litigation.

The bankruptcy courts have determined that mediation is the alternative dispute resolution process that best serves the needs of litigants and their attorneys in the timely and efficient resolution of cases. However, nothing in these rules shall prevent the parties from voluntarily engaging in other forms of ADR, such as arbitration, early neutral evaluation, mini-trial, or other appropriate ADR processes.

(a) *Definition.* Mediation is a process in which impartial and neutral persons assist parties in reaching agreed settlements. Mediators facilitate communications between the parties and assist them in their negotiations. When appropriate, mediators may also offer objective evaluations of cases and may make settlement recommendations.

(b) *Cases appropriate for referral to mediation.* The determination of whether a matter should be referred for mediation is addressed to the sound discretion of the judicial officer assigned to the case.

(c) *Referral procedure.*

(1) A bankruptcy judge may refer a case to mediation on the judge's own motion. If the court determines that a case is appropriate for referral to mediation, the court shall enter an order directing the parties to schedule and complete a mediation conference as set forth in these rules within such time frame as the court may specify. Within 14 days of the entry of the order of referral, a party may file a written objection to the referral order, stating concisely the reasons the case should not be referred for mediation. The objection shall be served on all parties. The court may rule on any objection without a hearing or, in its discretion, may conduct a hearing either in person or by telephone.

(2) A party may request that a case be referred to mediation. The request shall be made by motion addressed to the bankruptcy judge assigned to the case.

(3) The order of referral shall state a time period within which the mediation shall be completed.

(4) A court may not order a case to mediation more than one time except upon a showing of exceptional circumstances or upon the request of all parties.

(5) Upon the court's entry of an order referring the case to mediation, and upon all objections having been disposed of by the court, the parties shall have a period of 21 days from the date of entry of the court's final order to schedule

the mediation. If the parties are unable to schedule the mediation within the twenty-day period or to agree on a date and/or a mediator, the court shall assign a mediator and shall order the date, time, and place for the mediation, which shall be binding on the parties.

(d) *Pre-mediation documents.*

(1) The mediator may submit to the parties a list of required pre-mediation documents and agreements at least 14 days prior to the scheduled date for mediation. All objections to pre-mediation documents shall be addressed to the mediator not less than 7 days prior to the scheduled date and a mediation agreement shall be entered prior to commencement of mediation.

(2) If pre-mediation documents are not furnished within 7 days of the scheduled mediation, any party and/or the mediator may apply to the court, which shall determine the disputed terms and conditions of the mediation.

(3) Failure to reasonably agree to the pre-mediation agreements and/or to timely raise objections to pre-mediation agreement which delays or encumbers the mediation process will be considered a failure to comply with the order of referral and the mediator and/or parties shall report such failure to the court. The court may enter such orders as it deems appropriate.

(e) *Authority to settle.*

(1) *Appearance at mediation.* Counsel, including lead trial counsel, for all parties must appear at the mediation unless otherwise ordered by the court.

(2) *Attendance of parties.* All unrepresented individual parties must appear in person at the mediation unless excused in advance by the court. Representatives of corporate parties, organizations, insurance carriers (if applicable) or other entities must also appear at the mediation or be available by telephone, as the mediator or the court may direct, throughout the entire mediation. Office closings and time zone differences do not excuse a company representative from continued participation in mediation under this rule. Each party representative participating in the mediation must have full authority to settle the case.

(f) *Sanctions.* If a party, or party representative, or attorney fails to appear or be available as provided by these rules at a scheduled mediation, or if a party, or party representative, or attorney is substantially unprepared to participate in the mediation, or if a party, party representative, or attorney fails to participate in good faith during a mediation session, a judge, upon motion or upon the judge's own initiative, may impose appropriate sanctions, including attorneys' fees and reasonable expenses incurred.

(g) *Standards for Neutrals.*

(1) *Qualifications and training.* Neutrals shall have such experience and training as the parties may agree or the court may determine are appropriate to help the parties resolve the dispute over which the neutral will mediate.

(2) *Oath of neutrals.* Every neutral serving under these rules shall execute and file with the clerk the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualification and confirmation of appointment.

(3) *Immunity.* Neutrals or others authorized to serve in a specific case are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

(4) *Codes of ethics and standards of conduct.* Any neutral serving under these rules shall be subject to all codes of ethics and standards of conduct set by statute, by the Judicial Conference of the United States, and by other professional organizations to which the neutral may belong and or that may be approved or adopted by the court.

(h) *Selection of neutrals.*

(1) *Parties to confer.* Unless otherwise ordered, the parties must confer in good faith and attempt to agree on a neutral. Before nominating a neutral, the parties must have confirmed the neutral's availability and willingness to serve within the time frame proposed.

(2) *Appointment of the neutral when parties agree.* If the parties agree on a neutral and confirm the neutral's availability, the parties must identify the nominee in the proposed order submitted to the court and provide the court with the following information:

(A) the name, address and telephone number and, if applicable, the e-mail address of the mediator;

(B) briefly describe the training, experience or other qualifications of the mediator;

(C) state the rate of compensation of the mediator;

(D) state that the mediator and the parties have agreed upon the selection and rate of compensation;

(E) state whether any portion of the mediator's fees will be paid from property of the bankruptcy estate, and, if so, the extent of the payment; and

(F) state the estimated time period within which the mediation will be held.

(3) *Ruling on appointment of mediator.*

(A) *No hearing required.* The bankruptcy judge shall rule on the selection of the mediator without a hearing, and absent substantial countervailing considerations, the bankruptcy judge will appoint the neutral whom the parties have jointly nominated and who is willing to serve.

(B) *Findings required if any compensation is paid by bankruptcy estate.* In the event any of the compensation of the mediator is to be paid by the estate, the court also shall consider and approve the rate of compensation of the mediator and the allocation of costs between or among the parties in the order appointing the mediator.

(4) *Appointment of a neutral when parties disagree.* If the parties cannot agree on a neutral, they shall so advise the court. Upon being so advised, the bankruptcy judge, at his or her discretion, may select a neutral and enter an order of referral to mediation and establish such parameters and guidelines for the mediation as are appropriate under the circumstances of the case.

(5) *Documents provided by the court to the neutral.* Promptly after the neutral is designated, the court shall provide the neutral with a copy of the order of referral.

(6) *Disqualification of neutrals.* No person may serve as a neutral in a mediation in violation of:

(A) the standards set forth in 28 U.S.C. § 455;

(B) any applicable standard of professional responsibility or rule of professional conduct;

(C) any additional standards adopted by the court; or

(D) the neutral discovers a circumstance requiring disqualification and immediately submits to the parties and to the court a written notice of recusal.

(E) The parties may not waive a basis for disqualification described in 28 U.S.C. § 455(b).

(7) *Proposed order of referral.*

(A) *Submission to court.* If the parties recommend mediation, counsel must prepare a proposed order of referral for submission to the court.

(B) *Contents of proposed order.* The proposed order of referral must:

(i) state that mediation is appropriate for the case;

(ii) identify by name the available neutral whom the parties nominate to mediate the case;

(iii) specify the time frame within which the parties propose that the mediation will be completed and the date by which the neutral must file written confirmation of that completion; and

(iv) suggest and explain any modifications or additions to the case management and scheduling order that would be advisable because of the reference to mediation.

(8) *Neutral's post-mediation report to court.* Within 14 days of the completion of a mediation conducted pursuant to this rule, the neutral shall advise the bankruptcy judge in writing whether the case was resolved by mediation.

(i) *Confidentiality of proceedings.*

(1) *General rule of confidentiality.* Except as otherwise provided in these rules or required by law, all communications made in connection with mediation proceedings under these rules shall be confidential. Mediation-related communications shall not be subject to disclosure and may not be used as evidence against any participant in any judicial or administrative proceeding.

(2) *No compelled disclosure.* A party, a party's attorney, a party's representative, and the neutral may not be compelled to testify in any proceedings related to matters occurring during a mediation under these rules. A party, a party's attorney, a party's representative, and the neutral may not be subject to process requiring disclosure of confidential information or data related to a mediation conducted under these rules.

(3) *Limitations on communications with court.* A person participating in a mediation under these rules may not be compelled to disclose to the court any communication made, position taken, or opinion formed by any party or neutral in connection with mediation proceedings.

(4) *Exception to the general rule of confidentiality.* The only event that may make it appropriate for either the neutral or either of the parties to disclose a confidential communication arising from proceedings governed by these rules is a finding by the court that such testimony or other disclosure is necessary to:

(A) prevent a manifest injustice;

(B) help establish a violation of law; or,

(C) prevent harm to the public health or safety.

(5) *Compensation of neutrals.*

(A) *In general.* Unless otherwise established by statute, directed by the court, or unless proceeding pro bono, neutrals may charge reasonable fees and charges for services and expenses.

(B) *Allocation of costs.* Unless otherwise agreed to by the parties in writing or ordered by the court, the costs of the neutral's services shall be paid in equal shares by the parties.

(C) *Payment of costs.* The parties shall pay the neutral within 30 days from the receipt of the statement from the neutral. Except when excused by these rules or by order of the court, the failure of a party to pay that party's share of a neutral's fee within the required time may result in the imposition of sanctions.

Rule 9027-1. Removal.

(a) *Notice of Removal.* A notice of removal shall be filed in accordance with Rule 5(b) of the Local Uniform Civil Rules of the United States District Courts for the Northern and Southern Districts of Mississippi.

(e) *Procedure After Removal.* If a statement filed by a party in connection with the removed action states that the proceeding or any part of it is core, the party shall also state that the party does or does not consent to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment. (Effective December 1, 2015; amended effective December 1, 2019.)

Rule 9033-1. Proposed Findings of Fact and Conclusions of Law.

If the Court determines that it may not enter a final order or judgment in a particular proceeding designated as core under 28 U.S.C. § 157(b), Fed. R. Bankr. P. 9033 shall apply as if the proceeding were non-core. (Effective December 1, 2015.)

Rule 9037-1. Privacy Protection for Filings Made with the Court.

(h) *Motion to Redact a Previously Filed Document.* Upon the filing of a motion to restrict and/r redact public access to a previously filed document due to alleged violations of privacy requirements provided under Fed. R. Bankr. P. 9037, the clerk of court is authorized to restrict public access to the previously filed document pending a ruling on the motion. If the court grants the motion, these restrictions on public access remain in effect until further court order. If the court denies the motion, the restrictions must be lifted, unless the court orders otherwise.

U.S. Bankruptcy Court
Local Rules

STANDING ORDERS

UNITED STATES BANKRUPTCY COURTS
NORTHERN DISTRICT

STANDING PROCEDURAL ORDER RE PAYMENTS OF COMPLAINT FILING FEES BY TRUSTEES

WHEREAS, Item 6 of the Schedule of Fees adopted by the Judicial Conference of the United States pursuant to authority granted by 28 U.S.C. §1930(b), in pertinent parts, provides for the payment of a fee for filing a complaint in a U.S. Bankruptcy Court in the same amount as the filing fee prescribed in 28 U.S.C. §1914(a) for instituting in a U.S. District Court any civil action other than a writ of habeas corpus; and that if a trustee in a case under the U.S. Bankruptcy Code is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized; and

WHEREAS, for orderliness of record-keeping, appropriate procedural mechanisms should be provided to effectuate such pertinent language from said Schedule of Fees; it is

ORDERED that:

1. If, at the time of filing, sufficient funds in a bankruptcy estate are on hand, the trustee shall pay the filing fee in full coincident with the filing of the adversary proceeding;

2. If insufficient liquid funds are available to the trustee upon filing, the trustee shall file a motion alleging such fact and praying for deferment of payment of the filng fee; and

3. Promptly upon the liquidating or obtaining of sufficient estate assets to pay such complaint filing fee, the trustee shall pay to the Clerk of this Court the adversary proceeding filing fee in full.

ORDERED AND ADOPTED this the 20th day of May, 1992.

/S/ David W. Houston, III

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

ORDER DESIGNATING THE BANKRUPTCY JUDGES OF THE NORTHERN DISTRICT OF MISSISSIPPI TO CONDUCT JURY TRIALS

The United States District Court for the Northern District of Mississippi hereby specially designates Bankruptcy Judge David W. Houston, III, of this district to conduct jury trials pursuant to 28 U.S.C. §157(e), which reads as follows:

“If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties."

This order shall be entered nunc pro tunc, October 22, 1994, the effective date of the Bankruptcy Reform Act of 1994.

This is the 7th day of February, 1995.

L.T. SENTER, JR., Chief Judge

/S/ Neal B. Biggers

NEAL B. BIGGERS

GLEN H. DAVIDSON

Brought forward without change effective February 1, 2010.

STANDING ORDER REQUIRING CLOSING REPORTS IN REOPENED CASES

On ore tenus motion of the U.S. Trustee and for good cause shown; it is

ORDERED that in each reopened case in this court wherein a trustee shall be appointed/reappointed, when the bankruptcy estate shall have been fully administered, such trustee shall, as the case may be, file either a report of no distribution or a final account and report in the same manner as required by law in other bankruptcy cases.

DATED: November 13, 2001

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

STANDING ORDER CONCERNING CHAPTER 13 PRE-CONFIRMATION PAYMENTS

Payments required by 11 U.S.C. §1326(a)(1) shall be subject to the following provisions:

1. Pursuant to §1326(a)(1)(B), the debtor shall pay to the Chapter 13 trustee all payments scheduled in a lease of personal property, said payments to commence not later than 30 days after the date of the order for relief. The Chapter 13 trustee shall thereafter make payments to the lessor creditor as set forth in paragraph 3 hereinbelow.

2. Pursuant to §1326(a)(1)(C), the debtor shall pay to the Chapter 13 trustee preconfirmation adequate protection payments, applicable to a creditor holding an allowed claim secured by personal property to the extent that the claim is attributable to the purchase of such property by the debtor, said payments to commence not later than 30 days after the date of the order for relief. The

adequate protection payments, which are to protect against depreciation of the collateral and which are to be based on the value of the collateral, are to be proposed by the debtor and filed with the court. If a creditor believes that the proposal is insufficient, an objection to the amount of the adequate protection payments shall be filed by the creditor which will be considered by the court as contemplated by §1326(a)(3). The Chapter 13 trustee shall continue to make the payments as proposed by the debtor unless and until the court orders otherwise.

3. The Chapter 13 trustee shall make payments on a monthly basis pursuant to this order as soon as practicable after the filing of a proof of claim by the creditor to whom a payment is due. In the case of a secured claim, the said creditor shall provide evidence of the perfection of the relevant security interest to the Chapter 13 trustee prior to the commencement of payments.

4. In addition to the amount of the payments which are to be made to the creditors, the Chapter 13 trustee may assess an administrative fee for effectuating the payments required by this standing order and shall collect that additional fee from the debtor at the time of making the said lease or adequate protection payments. The administrative fee shall be equal to the percentage fee established by the United States Attorney General pursuant to 28 U.S.C. §586(e).

5. All payments made by the Chapter 13 trustee pursuant to this standing order shall be made in the ordinary course of the trustee's business from funds as they become available for distribution to the affected creditors. The practice of confirming Chapter 13 plans expeditiously in this district will be continued. Generally, confirmation will occur prior to the bar date for filing proofs of claim by non-governmental creditors.

6. The principal amount of the adequate protection recipient's claim shall be reduced by the amount of the adequate protection payments remitted to the claimant unless the court orders otherwise. Such adequate protection payments shall continue until the commencement of "equal monthly payments" under the confirmed Chapter 13 plan.

7. Upon the dismissal of a case, or conversion to another chapter, prior to the confirmation of the proposed Chapter 13 plan, the Chapter 13 trustee shall make the pre-confirmation adequate protection payments, or a portion thereof, from any funds available for that purpose, received on or before the date of the entry of the order of dismissal or conversion, to creditors, contemplated by §1326(a)(1)(B) and (C), that have filed proofs of claim prior to the date of the dismissal or conversion.

This standing order shall remain in effect until further order of the court.

This the 2nd day of May, 2006.

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

STANDING ORDER OF TRANSFER AND ASSIGNMENT

WHEREAS, the Honorable Neil P. Olack (Judge Olack) was appointed United States Bankruptcy Judge for the Southern District of Mississippi on May 1, 2006, and,

WHEREAS, by order of the Judicial Council of the Fifth Circuit, Judge Olack has been assigned to the Northern District of Mississippi, effective May 1, 2006, to hear and conclude any and all cases regularly assigned to him and,

WHEREAS, the court finds that the effective and expeditious administration of justice would be promoted in the Northern District of Mississippi by transferring and assigning all Greenville Division and Bolivar County bankruptcy cases to Judge Olack,

IT IS, THEREFORE, ORDERED as follows:

(1) Beginning on May 30, 2006, and continuing thereafter until ordered otherwise, all petitions filed in the Northern District of Mississippi which reflect Bolivar, Carroll, Humphreys, Leflore, Sunflower or Washington county as the county of residence or principal place of business of the debtor(s) shall be assigned to Judge Olack.

(2) Effective May 30, 2006, all pending Northern District of Mississippi bankruptcy cases (excepting those listed below) which reflect Bolivar, Carroll, Humphreys, Leflore, Sunflower or Washington county as the county residence or principal place of business of the debtor(s) shall be transferred to Judge Olack The transfer of a case hereby shall include the transfer of any pending adversary proceeding(s).

(3) The transfer of pending cases as provided by paragraph (2) shall not include the following cases: MaxTel USA, Inc. (02-14610), exTel Communications, LLC (02-14611), ezTel, LLC (02- 14612), exTel Networks, LLC (02-14613), exTel Networks Services, LLC (02-14614), Long Distance Billing Service, Inc. (05-11168), and J. W. Jefferson and Geneva Jefferson (04-17842).

SO ORDERED, this the 22nd day of May, 2006.

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

STANDING ORDER ADOPTING ADMINISTRATIVE PROCEDURES FOR ELECTRONIC CASE FILING

WHEREAS, this court, by separate order, has adopted mandatory electronic filing for all documents and pleadings effective from and after September 1, 2007; and

WHEREAS, adoption of mandatory electronic filing warrants an updating of the existing Administrative Procedures for Electronic Case Filing as approved by the court; it is

ORDERED that the Administrative Procedures for Electronic Case Filing appended hereto are hereby approved and are effective as of September 1,2007.

IT IS FURTHER ORDERED that the Administrative Procedures for Electronic Case Filing appended hereto supplant and supercede all prior version of the Administrative Procedures approved by this court

SO ORDERED, this the 20th day of August, 2007.

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

STANDING ORDER ALLOWING DISMISSAL OF PLEADINGS AS TO WHICH UNCURED DEFICIENCIES REMAIN

WHEREAS, the advent of CM/ECF allows parties to file pleadings or other documents directly into the court's electronic data base, and

WHEREAS, personnel in the clerk's office review all electronically filed pleadings and documents for errors relating to form (as distinguished from matters of substance), and

WHEREAS, when an error is found, clerk's office personnel issue a "Clerk's Request for Corrective Action" which identifies the error and explains how to correct it, and

WHEREAS, the failure of the filing party to implement the corrective action requested by the clerk creates unreasonable delay prejudicial to other parties, and

WHEREAS, the Advisory Committee notes to the 1993 amendment to Rule 5005 of the Federal Rules of Bankruptcy Procedure suggest that requirements of form mandated by the Federal Rules of Bankruptcy Procedure or by local rules or practice should be enforced by a judge rather than the office of the clerk; it is

ORDERED that if the filer of a pleading or document has failed to implement a Clerk's Request for Corrective Action within two business days after issuance of the request, the pleading or document may be dismissed or stricken by *sua sponte* order of the court.

DATED: June 30, 2008

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

REVISED STANDING ORDER DELINEATING CERTAIN POST CONFIRMATION PRACTICES IN CHAPTER 13 BANKRUPTCY CASES

In order to enable Chapter 13 debtors and secured creditors and/or mortgage servicers to better ascertain an accurate amount owed on the indebtedness prior to the entry of the Chapter 13 discharge, the secured creditors/mortgage servicers shall undertake the following practices and procedures subsequent to the confirmation of the debtors' Chapter 13 plan, to-wit:

1. Secured creditors/mortgage servicers should carefully monitor post-petition payments made in a Chapter 13 case. If the underlying indebtedness is paid current post-petition, then the secured creditors/mortgage servicers should not seek to recover late fees. No late fees should be recovered or demanded for systemic delay, but should be limited only to actual defaults, for example, when the debtor fails to remit the payment due to the Chapter 13 trustee. See, In re Lee, 167 B.R. 417 (Bankr, S.D. Miss. 1992), affd. 168 B.R. 319 (S.D. Miss. 1993), aff'd. 22 F.3d 1094 (5th Cir. 1994).

2. Payments made on the pre-petition/pre-confirmation arrearage claim should be exclusively applied to the arrearage claim. Regular monthly mortgage payments that are paid post-confirmation are to be applied to the monthly installment due in the month that the payment was made to the Chapter 13 trustee.

3. Secured creditors/mortgage servicers should file a notice and reason for any payment change with the court and provide a copy to the Chapter 13 trustee, the Chapter 13 debtors, and the debtors' attorney of record. This specifically applies to payment changes resulting from an adjustable interest rate, as well as, any changes resulting from a loss or reduction in an interest credit.

4. Secured creditors/mortgage servicers are required to file a notice with the court, the Chapter 13 trustee, the Chapter 13 debtors, and the debtors' attorney of record, as to any protective advances made in reference to a secured claim, such as, “force placed” insurance premiums or property taxes. Should the secured creditors/mortgage servicers elect, this notice may be filed and disseminated in the form of an amended proof of claim.

5. Secured creditors/mortgage servicers should not collect or attempt to collect from the Chapter 13 debtors any post-confirmation/pre-discharge fees, including attorney fees, unless approved by the Bankruptcy Court. An application to approve such fees may be made pursuant to Rule 2016, Federal Rules of Bankruptcy Procedures, or pursuant to an amended proof of claim which must be filed with the court and the Chapter 13 trustee, as well as, noticed to the Chapter 13 debtors and the debtors' attorney of record. This provision does not prohibit creditors or servicers from assessing fees or charges to the debtors' accounts for record keeping purposes only. See, In re Thompson, 351 B.R. 402 (Bankr. N.D. Miss, 2006). However, in keeping with the intent of this order which is to assist in determining an accurate amount of the indebtedness owed by Chapter 13 debtors, the better practice would be for the creditors or servicers to have all such assessments approved, even if for record keeping purposes only, as set forth in this provision.

6. Secured creditors/mortgage servicers should be mindful of the provisions of §524 (i) of the Bankruptcy Code which became effective October 17,2005, as result ofthe enactment of the Bankruptcy Abuse Prevention Consumer Protection Act of 2005 (BAPCPA).

Failure to comply with the provisions of this Standing Order may subject the offending party to sanctions, including, but not limited to, the disallowance of all or any part of the secured claim, actual and exemplary damages, costs, and attorney fees.

This Revised Standing Order replaces that certain Standing Order entered by the court on the 15th day of July, 2008.

So Ordered, this the 6th day November, 2008.

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY
JUDGE

Brought forward without change effective February 1, 2010.

STANDING ORDER ADOPTING INTERIM BANKRUPTCY RULE 1007-I

Whereas, the National Guard and Reservists Debt Relief Extension Act of 2011, Pub. L. No. 112-64 ("the Act"), excludes certain members of the National Guard and Reserves from means testing in Chapter 7 bankruptcy cases commenced within the four-year period beginning December 19, 2011, and

Whereas, the Advisory Committee on Bankruptcy Rules requested approval of an amendment to Bankruptcy Rule 1007 to implement the Act, and

Whereas, the Executive Committee of the Judicial Conference of the United States has approved the transmission of Interim Rule 1007-I to the courts with a recommendation that it be adopted through a local rule or standing order:

IT IS, THEREFORE, ORDERED that the attached Interim Bankruptcy Rule 1007-I be, and is hereby, adopted in the Northern District of Mississippi and is applicable to Chapter 7 cases filed on or after December 19, 2011, through December 18, 2015.

SO ORDERED, this the 28th day of December 2011.

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY
JUDGE

Interim Rule 1007-I. [1] Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(4) Unless either: (A) § 707(b)(2)(D)(I) applies, or (B) § 707(b)(2)(D)(ii) applies and the exclusion from means testing granted therein extends beyond the period specified by Rule 1017(e), an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

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[1] Interim Rule 1007-I has been adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No: 110-438, as amended by Public Law No. 116-53. The amended Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the 15-year period beginning December 19, 2008.

(c) TIME LIMITS. In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), (h) and (n) of this rule. In an involuntary case, the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days after the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 14 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(n) TIME LIMITS FOR, AND NOTICE TO, DEBTORS TEMPORARILY EXCLUDED FROM MEANS TESTING.

(1) An individual debtor who is temporarily excluded from means testing pursuant to § 707(b)(2)(D)(ii) of the Code shall file any statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of the temporary exclusion if the expiration occurs within the time specified by Rule 1017(e) for filing a motion pursuant to § 707(b)(2).

(2) If the temporary exclusion from means testing under § 707(b)(2)(D)(ii) terminates due to the circumstances specified in subdivision (n)(1), and if the debtor has not previously filed a statement and calculations required by subdivision (b)(4), the clerk shall promptly notify the debtor that the required statement and calculations must be filed within the time specified in subdivision (n)(1). (Amended effective December 1, 2009; brought forward without

change effective February 1, 2010; amended December 28, 2011, and applicable to Chapter 7 cases filed on or after December 19, 2011, through December 18, 2015; amended effective December 1, 2012, and applicable to Chapter 7 cases filed on or after December 19, 2008; amended effective December 19, 2019, an applicable to Chapter 7 cases filed on or after December 19, 2019, through December 18, 2023.)

STANDING ORDER ADOPTING INTERIM BANKRUPTCY RULES TO IMPLEMENT THE SMALL BUSINESS REORGANIZATION ACT OF 2019

On August 23, 2019, the Small Business Reorganization Act of 2019 (the SBRA) was enacted into law. The SBRA makes many substantive and procedural changes to the Bankruptcy Code and requires changes to the Federal Rules of Bankruptcy Procedure to implement those changes. However, the February 19, 2020 effective date of the SBRA occurs long before the Bankruptcy Rules can be amended under the three-year process required by the Rules Enabling Act. Accordingly, the Advisory Committee on Bankruptcy Rules (the Advisory Committee) drafted, published for comment, and subsequently approved interim bankruptcy rules (the Interim Rules) for distribution to the courts. The Committee on Rules of Practice and Procedure approved the Interim Rules, and the Judicial Conference authorized distribution of the Interim Rules to courts for adoption locally to facilitate uniform implementation of the changes mandated by the SBRA.

NOW THEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached Interim Rules are adopted in their entirety without change by the Bankruptcy Judges of the Northern and Southern Districts of Mississippi to be effective February 19, 2020. For cases and proceedings not governed by the SBRA, the Federal Rules of Bankruptcy Procedure and the Uniform Local Banlauptcy Rules for the Northern and Southern Districts of Mississippi shall apply.

SO ORDERED. Effective February 19, 2020.

SELENE D. MADDOX
JUDGE, UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON
JUDGE, UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
JUDGE, UNITED STATES BANKRUPTCY JUDGE

JASON D. WOODARD
JUDGE, UNITED STATES BANKRUPTCY JUDGE

INTERIM AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE [1]

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental 18 schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. This duty to file a supplemental schedule continues even after the case is closed, except for property acquired after an order is entered:

(1) confirming a chapter 11 plan (other than one confirmed under§ 1191(b)); or

(2) discharging the debtor in a chapter 12 case, a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b).

(Amended effective February 19, 2020).

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one

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[1] 1 These interim bankruptcy rules (the Interim Rules) have been prepared by the Advisory Committee on Bankruptcy Rules and approved by the Judicial Conference of the United States to be adopted as local rules by the Bankruptcy Courts to implement the procedural and substantive changes to the Bankruptcy Code made by the Small Business Reorganization Act of 2019. The Interim Rules will be withdrawn after similar amendments can made to the Rules of Bankruptcy Procedure under the nonnal Rules Enabling Act process.

or more trustees for estates being jointly administered in chapter 11 cases. (Amended effective February 19, 2020.)

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting

(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter. (Amended effective February 19, 2020.)

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case (other than under subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reportng interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than

21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)-(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).

(c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (c).

(d) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the 87 time fixed by the court.

(2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(e) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.

(f) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee. (Amended effective February 19, 2020.)

Rule 3010. Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13

(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court.

Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment. (Amended effective February 19, 2020.)

Rule 3011. Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code. (Amended effective February 19, 2020.)

Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of § 1111(b)(2) of the 5 Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan. (Amended effective February 19, 2020.)

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § l 126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under§ 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.

(d) STANDARD FORM SMALL BUSINESS 19 DISCLOSURE STATEMENT AND PLAN. In a small business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court. (Amended effective February 19, 2020.)

Rule 3017.1 Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the heating on confirmation. (Amended effective February 19, 2020.)

Rule 3017.2 Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement

In a case under subchapter V of chapter 11 in which § 1125 does not apply, the court shall:

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a date on which an equity secuiity holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan;

(c) fix a date for the hearing on confirmation; and

(d) fix a date for transmission of the plan, notice of the time within which the holders of claims and interests may accept or reject the plan, and notice of the date for the hearing on confirmation. (Amended effective February 19, 2020.)

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court under Rule 3017.2, or fixed for cause after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan. (Amended effective February 19, 2020.)

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.

(Amended effective February 19, 2020.)

STANDING ORDER ADOPTING AMENDMENTS TO INTERIM BANKRUPTCY RULE 1020 TO IMPLEMENT THE CARES ACT

Effective February 19, 2020, by Standing Order, the Bankruptcy Judges of the Northern and Southern Districts of Mississippi adopted Interim Bankruptcy Rules (including Interim Bankruptcy Rule I 020) approved by the Committee on Rules of Practice and Procedure to facilitate uniform implementation of the changes mandated by the Small Business Reorganization Act of 2019.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was signed into law. Section I I 13 of the CARES Act made several temporary changes to the Bankruptcy Code to provide financial assistance during the COVID-19 pandemic. These changes necessitate corresponding amendments to Interim Bankruptcy Rule 1020. The Committee on Rules of Practice and Procedure approved the amendments to Interim Rule 1020, and the Judicial Conference authorized distribution to courts for adoption locally to facilitate implementation of the changes mandated by the CARES Act.

NOW THEREFORE, pursuant to 28 U.S.C. § 2071 , Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached amendments to Interim Rule I 020 are hereby adopted in their entirety without change by the Bankruptcy Judges of the Northern and Southern Districts of Mississippi effective March 27, 2020. These amendments to the Interim Rule 1020 shall remain in effect until March 26, 2021.

SO ORDERED. Effective March 27, 2020.

SELENE D. MADDOX
JUDGE, UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON

JUDGE, UNITED STATES BANKRUPTCY
JUDGE

NEIL P. OLACK
JUDGE, UNITED STATES BANKRUPTCY
JUDGE

JASON D. WOODARD
JUDGE, UNITED STATES BANKRUPTCY
JUDGE

Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors or Debtors Under Subchapter V

(a) DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor or a debtor as defined in § 1182(1) of the Code and, if the latter, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor or a debtor as defined in § 1182(1) of the Code and, if the latter, whether the debtor elects to have subchapter V of chapter 11 apply. The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. The United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

(c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if a committee has been appointed under § 1102(a)(3), the committee or its authorized agent and any other entity as the court directs. (Amended effective March 27, 2020.)

Committee Note

The interim rule is amended in response to the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281. That law provides a new definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Subdivision (a) of the rule is amended to reflect that change. This amendment to the Code will terminate one year after the date of enactment of the CARES Act.

STANDING ORDER DELEGATING CERTAIN NOTICING RESPONSIBILITIES TO CHAPTER 7 TRUSTEES

WHEREAS, the United States Trustee Form 101-7-NFR, entitled *Chapter 7 Notice of Trustee's Final Report and Applications/or Compensation* (hereinafter "UST Form 101-7- NFR") is one of the U.S. Trustee Program's uniform forms which became effective April 1, 2009, and

WHEREAS, notice of a trustee's final report and application for compensation is a type of notice which may be delegated by the court pursuant to Fed. R. Bankr. P. 2002 (a)(6) and 2002 (f)(8), and

WHEREAS, the Bankruptcy Noticing Working Group has recommended that bankruptcy courts consider delegating noticing responsibility for the UST Form 101-7-NFR to the Chapter 7 trustees, and

WHEREAS, the instructions accompanying UST Form 101-7-NFR state that it is the notice that must be sent "by the chapter 7 trustee" to all creditors when the net proceeds realized in an estate exceed the amounts specified in Fed. R. Bankr. P. 2002(f)(8) for asset cases ready for distribution to claimants on or after April 1,2009,

IT IS, THEREFORE, ORDERED that noticing responsibility for UST Form 101-7-NFR should be, and is hereby, delegated to the Chapter 7 trustee filing the form notice.

IT IS FURTHER ORDERED that the trustee shall file a certificate of service with the court stating that the UST Form 101-7-NFR has been noticed and that the certificate of service shall include a copy of the form noticed and a list of the individuals, entities, and parties receiving said notice.

SO ORDERED, this the 8th day of May, 2009.

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

AMENDED STANDING ORDER REGARDING VIDEO CONFERENCING IN PROCEEDINGS BEFORE JUDGE NEIL P. OLACK

Video conferencing capabilities are available for (a) the U.S. Bankruptcy Court for the Northern District of Mississippi at the U.S. Courthouse in Greenville. Mississippi, and (b) the U.S. Bankruptcy Court for the Southern District of Mississippi at the U.S. Bankruptcy Court in Jackson, Mississippi. and the Dan M. Russell, Jr. U.S. Courthouse in Gulfport, Mississippi. The Court finds that counsel and others who utilize such video conferencing shall abide by the procedures and directives set forth below in proceedings before Judge Neil P. Olack:

SCHEDULING.

(1) The Court may set for hearing by video conference any matter in a bankruptcy case, including contested matters or adversary proceedings. Generally, such hearings will be scheduled to avoid significant time and expense of

travel for the Court and the participants. Video conferencing maybe utilized for status conferences and pretrial conferences, and for other hearings and trials requiring the introduction of evidence and taking of testimony when the Court deems appropriate.

(2) Parties in interest may request that the Court set for hearing by video conference any matter in a bankruptcy case. The moving party must:

(a) obtain consent from other interested parties prior to contacting the Court; and,

(b) request permission for hearing by video conference from Judge Olack's courtroom deputy seven days prior to the proceeding.

(3) The Court, in its discretion, shall determine whether said request should be granted. Requests received by the Court outside the time parameters described above will not be considered except in emergency situations. The Court may grant any request for hearing by video conference with or without a written order.

(4) The Court shall provide notice of the place and time for all proceedings set for hearing by video conference.

(5) The Court may at any time vacate a previously granted request for hearing by video conference, and may order any party to appear personally in court for any proceeding.

DOCUMENTS:

(1) In any proceeding set for hearing by video conference, the parties shall exchange all witness and exhibit lists and copies of exhibits, if applicable, at least seven days before the proceeding. The parties also shall provide copies of same to the Court's Jackson chambers at least seven days before the proceeding in either paper or electronic form. If parties choose to email exhibits to chambers, they should email them to olack_chambers@mssb.uscourts.gov. In marking the exhibits, the parties shall determine an identification sequence that eliminates any duplication. At the hearing, the original exhibits should be in the courtroom where the witness will testify.

(2) If any other written documents are to be considered or reviewed at any proceeding, the parties shall exchange and provide copies of such documents to the Court at least seven days prior to the proceeding.

(3) Failure to comply with this provision may result in sanctions, including the Court denying any undisclosed witness testimony and denying the admission of any unexchanged exhibits.

PROCEDURES:

(1) Decorum. The formalities of a courtroom shall be observed. When called, parties are to approach the video conference table and situate themselves so that they are able to view the video screen and be seen by the Court.

(2) Identification. All parties in attendance must identify themselves and state their interest in the proceeding.

(3) Witnesses. Any witness called will be sworn in for the video conference by the courtroom deputy or other authorized court personnel.

(4) Recording. The video conference constitutes a court proceeding, and any recording other than the official court version is prohibited. No party may record images or sounds from any location.

(5) Equipment Operation. The Court shall be responsible for operation of the video conferencing equipment.

(6) Contact Information. Questions concerning video conferencing should be directed to Judge Olack's courtroom deputy.

(7) Computation of Time. The computation of time as promulgated by Federal Rule of Bankruptcy Procedure 9006 shall apply to this Standing Order.

SO ORDERED. Effective: December 1, 2009.

NEIL P. OLACK
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Brought forward without change effective February 1, 2010.

STANDING ORDER PAYMENT OF ATTORNEY FEES IN CHAPTER 13 CASES

This order is applicable to all cases filed on and after August 1, 2014, pursuant to Chapter 13 of the Bankruptcy Code (11 U.S.C. 1301 et seq.).

Following confirmation of the plan, any fee to be paid to the attorney for the debtor, pursuant to the approved plan, shall be disbursed by the trustee as follows:

(1) The trustee shall make an initial payment of $100.00 plus additional payments equal to 15% of funds received by the trustee until the fee is paid.

(2) If any additional attorney fee is approved by the Court subsequent to confirmation of the plan, the amount of the additional fee will be amortized over the remaining months of the plan and the wage order adjusted as may be necessary.

SO ORDERED. Effective August 1, 2014.

Edward Ellington
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Neil P. Olack
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Katherine M. Samson
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Jason D. Woodard
JUDGE, UNITED STATES BANKRUPTCY JUDGE

AMENDED STANDING ORDER REGARDING USE OF "NO-LOOK" FEE IN AWARDING REASONABLE COMPENSATION AND REIMBURSABLE EXPENSES TO ATTORNEYS OF DEBTORS IN CHAPTER 13 CASES

If there is no objection raised by a party in interest, the attorney for the debtor in chapter 13 cases may comply with the requirements of 11 U.S.C. § 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure ("Rule 2016") by charging the debtor a presumptively reasonable fee (the "No-Look Fee") up to:

- $3,000 Cases filed from October 1, 2013, through July 31, 2014.
- $3,200 Cases filed on or after August 1,2014, through December 31, 2016.
- $3,400 Cases filed on or after January 1, 2017.

An attorney who chooses to use the No-Look Fee may not seek or collect additional payment from the debtor without prior Court approval, except as expressly allowed in this Order.

The services encompassed by the No-Look Fee include the representation of the debtor during the pre-confirmation and post-confirmation stages of a chapter 13 case but do not include the representation of the debtor in any adversary proceeding. An attorney who represents a debtor in an adversary proceeding must submit an appropriate itemized application for compensation that complies with Rule 2016.

The No-Look Fee shall be deemed full compensation for all legal services rendered by the debtor's attorney, and all actual and necessary expenses incurred in connection with those services, except for the following expenses: (1) the statutory filing fee, 28 U.S.C. § 1930(a)(1)(B) and (b); (2) any charge incurred for a credit report from a credit reporting agency; and (3) the credit counseling fee, 11 U.S.C. § 109(h)(1). An attorney may seek reimbursement for any of these expenses from the debtor if the attorney actually incurred that expense in connection with the debtor's bankruptcy case and if the debtor actually agreed to reimburse the attorney for that expense.

The No-Look Fee may be adjusted by the Court if appropriate in the case. For example, if a contested matter arises that requires the expenditure of an extraordinary amount of time or that involves an expense of an unusual nature or amount, an attorney may request an enhancement of the No-Look Fee by filing an appropriate itemized application that complies with Rule 2016. Conversely, the Court may order a reduction of the No-Look Fee if warranted by the circumstances in the case.

This Order does not preclude an attorney from exercising the alternative option of forgoing the No-Look Fee and instead filing an application that establishes the attorney's entitlement to compensation under the lodestar method and reimbursement of expenses. In such event, the debtor's application must include contemporaneous hourly time records for all work performed in the case as required by Rule 2016.

This Order amends all previous standing orders regarding attorney's fees in chapter 13 cases.

SO ORDERED. Effective January 1, 2017.

Edward Ellington
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Neil P. Olack

JUDGE, UNITED STATES BANKRUPTCY
JUDGE

Katherine M. Samson
JUDGE, UNITED STATES BANKRUPTCY
JUDGE

Jason D. Woodard
JUDGE, UNITED STATES BANKRUPTCY
JUDGE

STANDING ORDER DELEGATING CERTAIN NOTICING RESPONSIBILITIES

WHEREAS, Rule 2002, Rules 9013 and 9014, Federal Rules of Bankruptcy Procedure, and certain other provisions of law and language included in the Federal Rules of Bankruptcy Procedure authorize this Court to delegate certain noticing responsibilities as the Court may direct; it is

ORDERED as follows:

(1) The plan proponent in a Chapter II case shall give the debtor, the trustee, the U.S. Trustee, all creditors and indenture trustees no less than 28 days notice of (a) the time fixed for filing objections and the hearing date to consider approval of a disclosure statement; and (b) the time fixed for filing objections and hearing date regarding confirmation of a plan;

(2) In all cases, the moving party shall give the debtor, the trustee, the U.S. Trustee, all creditors and indenture trustees not less than 21 days notice of (a) a proposed use, sale or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice; (b) the hearing on approval of a compromise or settlement of a controversy, unless the court for cause shown directs that notice not be sent; (c) the hearing on dismissal or conversion of a case to another chapter; (d) the time fixed to accept or reject a proposed modification of a plan; and (e) hearings on all applications for compensation or reimbursement of expense totaling in excess of $1000;

(3) In all cases, the moving party shall give the debtor, the trustee, the U.S. Trustee, all creditors and indenture trustees (except as otherwise expressly provided by law, Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, or another order of this court), not less than 21 days notice of the date when objections must be filed in all contested matters (i.e., all matters other than adversary proceedings) except as to motions for relief from the automatic stay under 11 U.S.C. Sec. 362 and motions to avoid liens under 11 U.S.C. Sec 522(f); and

(4) Within seven (7) business days from the issuance of the appropriate Notice of Motion for Relief from Stay or for Adequate Protection in a Chapter 11 case, the moving party shall serve a copy of the Chapter 11 Motion, along with said Notice, upon the debtor, the attorney of record for the debtor, the trustee, if any, the U.S. Trustee, all holders of liens on any property as to which

relief is sought, all members of the unsecured creditors' committee, if any, and the attorney for said committee, if any. A copy of said motion and said notice of hearing shall be served on the twenty (20) largest unsecured creditors if there is no unsecured creditors' committee.

The moving party in paragraphs (I), (2), (3) and (4) shall file in the office of the Clerk of this court, within seven (7) business days from the date of the issuance of said notice, a certificate of service, with a copy of the materials served, that states upon whom the materials were served and the date of service. It is the responsibility of the moving party, not the Clerk of this court, to ascertain the names and addresses of the parties to be served.

DATED: February 1, 2010

DAVID W. HOUSTON, III
JUDGE, UNITED STATES BANKRUPTCY COURT

Brought forward and amended effective February 1, 2010.

STANDING ORDER DELEGATING NOTICING OF MEETINGS OF CREDITORS IN CHAPTER 12 AND CHAPTER 13 CASES TO THE CASE TRUSTEE

The United States Bankruptcy Code and the Federal Rules of Bankruptcy Procedure afford bankruptcy judges considerable discretion in the allocation of responsibility for providing notice of events in the course of bankruptcy cases and proceedings. The responsibility for noticing all meetings of creditors in Chapter 12 and Chapter 13 cases was delegated to the case trustee by this court in 1989 for Chapter 12 cases and 1987 for Chapter 13 cases. The court has reconsidered this policy and finds that it has worked well and should continue from and after February 1, 2010.

IT IS, THEREFORE, ORDERED that the trustee in all Chapter 12 and Chapter 13 cases filed in the Northern District of Mississippi is hereby delegated the responsibility of noticing all meetings of creditors. The form of the notice of meetings of creditors so generated shall be at the at the discretion of the trustee but, in any event, the notice shall specify the time and date of the meeting of creditors, advise of the stay provisions of 11 U.S.C. §§ 362, 1201 and 1301, specify the time within which proofs of claim may be filed and provide the address ofthe court where proofs of claim may be filed.

SO ORDERED, this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

STANDING ORDER AS TO OFFICIAL CHARACTER OF LOCAL FORMS UTILIZED IN THIS COURT

WHEREAS, this Court utilizes certain locally created forms denominated and Judge's Local Form ("JLF") and Clerk's Local Forms ("CLF") as well as certain forms which exist within the Court's Case Management/Electronic Case Files ("CM/ECF") system, and

WHEREAS, great care has been exercised and continues to be exercised in the drafting of such forms so as to optimize conformity thereof to federal statutes, Federal Rules of Bankruptcy Procedure, Federal Rules of Procedure, Local Rules of this Court, policies of the Judicial Conference of the United States and of the Administrative Office of the United States Courts, other pertinent rules and regulations, applicable case law and judicially noticed circumstances prevalent in the Northern District of Mississippi; and,

WHEREAS, the process whereby such forms are drafted, developed and incorporated into master copies or into the CM/ECF system are either expressly, impliedly or tacitly approved by this Court, and

WHEREAS, the utilization of such local forms is accomplished with the approval and sanction ofthis Court; it is hereby

ORDERED, that the current and future Judge's Local Forms, Clerk's Local Forms and the forms incorporated into the Court's CM/ECF system, as promulgated and utilized by this Court or by the office of the Clerk of this Court, be and the same are hereby deemed to be Official Local Forms of this Court and the same are hereby clothed with the authority of this Court whenever utilized in cases and matters under the jurisdiction of this Court.

SO ORDERED, this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

STANDING ORDER RE MAILING OF MOTIONS/APPLICATIONS/ATTACHMENTS BY UNITED STATES TRUSTEE

WHEREAS, this Court is of the opinion that the office of the clerk of this Court should be relieved of the responsibility for replicating and mailing copies of motions/applications/attachments filed by the office of the U. S. Trustee as movant/applicant to noticees in contested matters; and

WHEREAS, pending the further order of this Court, the Court, nevertheless, is of the opinion that the Court should continue to direct that the Clerk of this Court perform noticing (as distinguished from replicating and mailing copies of the U.S. Trustee's motions/applications/attachments) in all contested matters in which the U.S. Trustee is the moving party or applicant; and

WHEREAS, this Court is of the opinion that the Federal Rules of Bankruptcy Procedure confer on this Court discretion to make these determinations; it is

ORDERED that the office the U.S. Trustee for this district, in compliance with Rules 9013 and 9014 F.R.Bk.P., shall replicate and mail to all necessary noticees copies of all motions, applications or attachments thereto in which the U.S. Trustee is the moving party or applicant; and it is further

ORDERED that the office of the U.S. Trustee shall, within seven (7) days from the mailing of such copies to noticees, file in the office of the Clerk of this

Court a copy of all such paperwork served on noticees, along with a certificate of service thereof; and it is further

ORDERED that, pending the further order of this Court, the Clerk of this Court shall perform noticing (as distinguished from replicating and mailing copies of the U.S. Trustee's motions/applications/attachments) to all necessary noticees consistent with the Federal Rules of Bankruptcy Procedure as to all such motions, applications and other contested matters filed by the U.S. Trustee in this Court; and it is further

ORDERED that this order shall be effective as to motions, applications and other contested matters filed on and after the 1st day of February, 2010.

DATED: February 1, 2010

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

ORDER FOR SEGREGATION OF TAX DEPOSITS

THIS COURT ORDERS AND DIRECTS the debtor(s)-in-possession or trustee, pursuant to 26 U.S.C.§ 7512, 11 U.S.C.§ 346 and Rule 2015, Federal Rules of Bankruptcy Procedure, to segregate and to hold separate and apart from all other funds and to deposit in a separate federally insured checking account all monies withheld from employees or collected from others for taxes under any law of the United States, the State of Mississippi and/or any other lawfully established taxing agencies during the pendency of this proceeding. The debtor-in-possession shall open a separate checking account, which shall include the indication "Tax Account" in the account name, comply with the pertinent U.S. Trustee operating guidelines and reporting requirements, and such account shall be opened within seven (7) days from the date of this order. The debtor-in-possession shall file a notice with the office of the U.S. Trustee within fourteen (14) days from the date of this order and within fourteen (14) days from the date any subsequent tax account is opened, disclosing the name and address of the financial institution where the tax account is located, the account number, the date the account was opened, and the opening balance. Further, the debtor-in-possession or trustee is directed to and shall pay over to the Internal Revenue Service, Mississippi State Tax Commission and/or any other lawfully established taxing agencies, respectively, withheld or collected post-petition taxes in the forms and within the time limits required by law or lawful regulations of said taxing agencies. The debtor-in-possession or trustee shall pay all post-petition federal, state and local taxes incurred as the taxes accrue and become payable and within the time limits prescribed by law or lawful regulations. The debtor-in-possession or trustee shall file all tax reports, tax returns and all other documents required by law or lawful regulations.

DATED: February 1, 2010

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

STANDING ORDER AUTHORIZING DISMISSAL OF CASE PROCEEDING OR MATTER WHEN INTERNET FEES DUE REMAIN UNPAID

Filing fees are due upon the filing ofthe petition in bankruptcy unless the debtor files with the petition an application for *informa pauperis* status or to pay the filing fee in installments. (28 U.S.C. §1930, Fed. R. Bankr. Pro. 1006). Likewise, additional filing fees prescribed by the Judicial Conference Schedule of Additional Fees for Bankruptcy Courts, as authorized by 28 U.S.C. § 1930(b), are due upon the filing of the relevant pleading. Before the advent of electronic filing, petitions or pleadings received without the required filing fee would be designated as "received", "accepted" or "lodged for filing", but not "filed", by the Clerk's office. Since electronic filing has made this procedure obsolete, the court is of the opinion that a policy and procedure is required to insure timely receipt of fees associated with the electronic filing of petitions and pleadings.

It shall be the policy of this court that all fees are due at the time of filing on the court's electronic filing system. Filers must settle their on-line accounts for any outstanding fees by midnight (Central Standard Time) on the day of the filing. If any fees are not received in a timely manner, the Clerk shall issue, and transmit in electronic format, a Notice of Intemet Fees Due with an attached schedule of the amount(s) due, the date(s) incurred and a description of the filing event use or the document filed. If the fees due as reflected on the attached schedule are not paid within forty-eight (48) hours of the date and time incurred, the relevant pleading(s) and/or case(s) will be dismissed *sua sponte* without further notice to the filing party.

IT THEREFORE ORDERED that users of the court's electronic filing system must settle their on-line accounts for any outstanding fees by midnight (CST) on the day of filing. If any fees are not received in a timely manner, the Clerk shall issue, and transmit in electronic format, a Notice of Intemet Fees Due with an attached schedule of the amount(s) due, the date(s) incurred and a description of the filing event used or the document filed. If fees due as reflected on the attached schedule are not paid within forty-eight of the date and time incurred, the relevant pleading(s) and/or case(s) will be dismissed *sua sponte* will out further notice to the filing party.

SO ORDERED, this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

STANDING ORDER AUTHORIZING DISMISSAL WHEN DEBTOR FAILS TO ATTEND THE MEETING OF CREDITORS

The appearance of the debtor and debtor's attorney at the meeting of creditors is mandatory, unless waived as set forth in Miss. Bankr. 1. R. 2003-1(a)(l). The cited local rule further provides that the failure of the debtor and the debtor's attorney to attend the meeting of creditors may result in dismissal of the case or the imposition of sanctions. The purpose of this Standing Order is to supplement the dismissal procedure prescribe in Local Rule 2003-1.

It is the opinion of the court that the dismissal procedure prescribed in Local Rule 2003-1 should be modified so as to provide for notice of potential dismissal in the document which schedules the initial meeting of creditors for each case. If a debtor thereafter fails to appear at a meeting of creditors, the case, or the non-appearing debtor in a joint case, will be dismissed without further notice to any party and without a hearing being scheduled, upon receipt by the court of a certification from the case trustee or the Office of the United States Trustee stating that the debtor did not appear and that the debtor did not make written request for the meeting to be rescheduled as provided by Local Rule 2003-1 (a)(2).

IT IS, THEREFORE, ORDERED that notice of potential dismissal for failure to attend the meeting of creditors will be provided in the document which schedules the initial first meeting of creditors in each case. If a debtor thereafter fails to appear at a meeting of creditors, the case, or the non-appearing debtor in a joint case, will be dismissed *sua sponte* without further notice to any party and without a hearing being scheduled, upon receipt by the court of a certification from the case trustee or the Office of the United States Trustee stating that the debtor did not appear and that the debtor did not make written request for the meeting to be rescheduled as provided by Local Rule 2003-1 (a)(2).

IT IS FURTHER ORDERED that the order of dismissal will be prepared, if necessary, by the case trustee or the Office of the United States Trustee and submitted to the Clerk for dissemination to all parties in interest after execution by the presiding Judge.

SO ORDERED, this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

STANDING ORDER REINFORCING TIMELY FILING REQUIREMENTS

WHEREAS, although most attorneys practicing in this court scrupulously observe and comply with the timeliness requirements of the Federal Rules of Bankruptcy Procedure when filing petitions and associated documents in this court, some attorneys fail to meet the filing timeliness requirements of such rules; and

WHEREAS, dilatory practices in meeting such filing timeliness requirements seriously impede the management of bankruptcy cases; and

WHEREAS, this court has concluded that appropriate sanctions should be introduced in order to encourage timely filings of documents such as schedules, financial disclosure statements, certification of credit counseling, and all other documents that are required by Rule 1007(c) of the Federal Rules of Bankruptcy Procedure to be filed with fourteen (14) days from the date of filing of a bankruptcy petition; and

WHEREAS, this court has determined that routine extensions of time to file the aforementioned paperwork will not be granted and that any motion for an extension of time to file such paperwork must be supported by sworn affidavit reciting facts that constitute good cause for an extension of time; it is

ORDERED that if a petition is not accompanied by schedules and other documents that are required for the administration of the case, the clerk of this court shall cause the debtor's attorney (or the debtor), to be notified of the rule requiring such documents to be filed within fourteen (14) days of the filing of the petition and this court's policy of enforcing the rule through the *sua sponte* dismissal of the case.

IT IS FURTHER ORDERED that unless (a) the requested documents are timely filed, (b) a motion for an extension of time to file the documents, with a supporting affidavit, has been filed, or (c) an objection and request for hearing regarding the potential dismissal has been filed, a case will be dismissed *sua sponte* if the documents requested by the clerk are not filed within fourteen days of the filing of the petition

SO ORDERED this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

STANDING ORDER IMPLEMENTING PROCEDURAL REQUIREMENTS AS A RESULT OF IN RE: HOWARD. 972 F.2D 639 (FIFTH CIRCUIT - 1992)

WHEREAS, this Court deems it appropriate to establish certain procedures in order to object to secured claims in Chapter 13 cases as a result of the September 8, 1992 decision in the aforementioned Howard case; it is

ORDERED, that to gain the approval of this Court for the alteration of a secured Chapter 13 claim at the behest of a Chapter 13 debtor, the said debtor shall file an objection to the pertinent secured claim substantially in the approved form of objection attached to this standing order. At the same time, the debtor shall serve the 21 day written response notice to each affected secured creditor in substantially the same form of notice of objection to secured claim likewise attached to this standing order.

DATED: February 1, 2010

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

IN RE:

CHAPTER 13 CASE NO. ______

DEBTOR(S)

OBJECTION TO SECURED CLAIM AND OTHER RELIEF

COMES NOW, Debtor(s) by and through counsel, and files this objection to the following pre-petition secured claim and request the Court to set the value for the purpose of plan confirmation:

CREDITOR: ________________
____
____

Description of Collateral:
Amount of Debt: $ ________, the amount alleged to be due.
Treatment: Pay Value of $ ________, plus interest of ____ percent, and upon payment of same eliminate any lien.

DEBTOR(S) pray(s) that upon payment of value plus interest, the lien be cancelled and any title documents be delivered to Debtor(s).

DATED: ________________

Respectfully submitted,

____
ATTORNEY FOR DEBTOR(S)
____
____
Telephone No.: ________________

IN RE: CHAPTER 13
CASE NO. ________________

DEBTOR(S)

NOTICE OF OBJECTION TO SECURED CLAIM

YOU ARE HEREBY NOTIFIED that a written response to the attached objection to secured claim, etc., must be filed with:

David J. Puddister, Clerk of Court
U.S. Bankruptcy Court
Northern District of Mississippi
703 Hwy 145 North
Aberdeen, MS 39730

and a copy must be served on the undersigned Debtor(s)' attorney and the Chapter 13 trustee on or before twenty one (21) days from the date of this notice, or the Court may enter a Confirmation Order, which shall set the value of each affected secured creditor's lien, and which shall sustain the objection to secured claim, etc., granting the relief requested therein. In the event a written response is filed, the court will notify you of the date, time and place of the hearing thereon.

DATED: ________________

CHAPTER 13 STANDING TRUSTEE ________________

ATTORNEY FOR DEBTOR(S)

____

____

Telephone No. ___________

AMENDED STANDING ORDER REGARDING FILING OF PAYMENT ADVICES PURSUANT TO 11 U.S.C. §521(a)(I)(B)(iv) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 1007(b)

IT IS HEREBY ORDERED, effective as to cases filed on or after January 1, 2009, that copies of all payment advices or other evidence of payment, addressed in §521 (a)(I)(B)(iv) of the Bankruptcy Code and F.R.B.P. 1007(b), received sixty (60) days before the date of the filing of the petition by the debtor from any employer of the debtor (1) shall not be filed with the Court, and (2) shall instead be provided to the case trustee at least seven (7) days prior to the first date set for the meeting of creditors pursuant to 11 U.S.C. §341(a), but not later than forty-five (45) days after the date of the filing of the petition. At the time the payment advices or other evidence of payment are provided to the aforesaid trustee, the debtor shall file a certificate with the Clerk of this Court evidencing compliance with this Standing Order.

If the case trustee certifies to the Court that the payment advices or other evidence of payment were not provided within the aforesaid forty-five (45) day period, or any additional period allowed pursuant to § 521(i)(3), the case may be dismissed by the Court without further notice by separate order.

Copies of the aforesaid payment advices or other evidence of payment shall be provided by the debtor to the U.S. Trustee during the pendency of a case within fourteen (14) days of a written request being filed by the U.S. Trustee with the Clerk of the Court. At the time the payment advices or other evidence of payment are provided to the U.S. Trustee, the debtor shall file a certificate with the Clerk of this Court evidencing compliance with this Standing Order.

If the U.S. Trustee certifies to the Court that the requested payment advices or other evidence of payment were not provided within the aforesaid fourteen (14) day period, the case shall be set for hearing to show cause why sanctions or other relief should not be granted by the Court

Copies of the aforesaid payment advices or other evidence of payment shall also be provided by the debtor to any creditor who timely requests said copies. For the creditor's request to be considered timely, it must be received by the debtor's counsel or the pro se debtor at least seven (7) days before the first date set for the meeting of creditors. The said documents shall be timely furnished in the same manner as they would be provided to the case trustee within the limits set forth above.

A debtor with unavailable payment advices may in the alternative provide to the case trustee, the U.S. Trustee, or a party in interest a certification setting forth the reasons that the required information is unavailable, stating the debtor's estimate of income, and providing other evidence, if any, of payments received within the sixty (60) day time period.

To facilitate the provisions of this Standing Order, the debtor and/or attorney for the debtor shall retain possession of the payment advices or other evidence of payment during the time that the case is pending.

This order amends the standing order regarding the filing of payment advices entered on January 31, 2006.

SO ORDERED this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010.

AMENDED STANDING ORDER ADOPTING PROCEDURES FOR OBTAINING DISCHARGE IN COMPLETED CHAPTER 13 CASES

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") requires certain disclosures and certifications to be made by the debtor before a discharge may be entered in cases commenced on or after October 17, 2005. This Standing Order establishes the standards and procedure whereby the debtor may comply with the disclosure requirements and obtain a discharge in chapter 13 cases. The requirements of this Standing Order must be met in order to receive a discharge from and after May 1, 2009. This Standing Order does not apply to cases commenced prior to October 17, 2005, nor does it apply in those cases where a discharge has been waived or denied.

1. Unless the debtor is not entitled to a discharge, the filing of the Notice of Completion of Plan Payments by the Chapter 13 Trustee will constitute notice that each debtor must file a Debtor's Certification and Motion for Entry of Chapter 13 Discharge Pursuant to 11 U.S.C. §1328(a) and (h), (the "Motion") (in substantially the same format as prescribed by the Clerk and made available on the Court's website). The Motion must be signed by the debtor(s) and the attorney of record and filed with the Court. A copy of the Motion must be served by the debtor(s) on all creditors and parties in interest included on the Court's mailing matrix within thirty (30) days of the filing date of the Chapter 13 Trustee's *Notice of Completion of Plan Payments.*

2. The Motion will include verifications by the debtor(s) regarding satisfaction of plan requirements, entitlement to a discharge, and the status of domestic support obligations ("Domestic Support Obligation" as defined at 11 U.S.C. §101(14A)). The Motion also will include verification that the debtor is not disqualified by the provisions of 11 U.S.C. §1328(h) from receiving a discharge.

3. If a response or objection to the Motion is not filed within twenty-one (21) days of the date of service as reflected on the Certificate of Service, and provided the debtor is otherwise entitled, the court will enter a discharge order. Entry of the discharge order constitutes a finding that 11 U.S.C. §1328(h) has been satisfied and that there is no reasonable cause to believe that the entry of discharge should be delayed. If a response or objection is filed to the Motion, the matter will be set for hearing.

4. If the Motion is not timely filed by the debtor(s), the case may be closed without the entry of discharge.

5. If the debtor(s) is/are unable to certify as to the truth and correctness of the assertions on the form Motion but believe(s) that a discharge is warranted nevertheless, debtor(s) should draft and file a motion for discharge explaining why the assertions in the form Motion can not be certified and further explaining why a discharge should be granted.

6. In the event the debtor(s) seek(s) a hardship discharge pursuant to 11 U.S.C. §§ 1328(b), the debtor's motion for hardship discharge shall include certification regarding the status of domestic support obligations (as defined at 11 U.S.C. § 101(14A)) and that the debtor(s) is/are not disqualified by the provisions of 11 U.S.C. § 1328(h) from receiving a discharge.

SO ORDERED, Effective: December 1, 2013.

Edward Ellington
UNITED STATES BANKRUPTCY JUDGE

Katharine M. Samson
UNITED STATES BANKRUPTCY JUDGE

Neil P. Olack
UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010; amended effective December 1, 2013.

DEBTOR'S CERTIFICATION AND MOTION FOR ENTRY OF CHAPTER 13 DISCHARGE

IN: RE
CASE NO.
Chapter 13

THIS MOTION SEEKS AN ORDER DISCHARGING THE DEBTOR(S) PURSUANT TO §1328(a) OF THE BANKRUPTCY CODE. IF YOU OPPOSE THIS MOTION, YOU MUST FILE A RESPONSE WITH THE COURT WITHIN 21 DAYS FROM THE DATE LISTED BELOW IN THE CERTIFICATE OF SERVICE. YOUR RESPONSE MUST SET FORTH THE SPECIFIC FACTUAL ALLEGATION WITH WHICH YOU DISAGREE AND A COPY OF YOUR RESPONSE MUST BE SERVED ON THE DEBTOR(S) AND DEBTOR'S(S') ATTORNEY. IF NO TIMELY RESPONSE IS FILED, THE COURT MAY GRANT THIS MOTION WITHOUT HOLDING A HEARING. A TIMELY RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

1. By signing below, the Debtor(s) certify under penalty of perjury that the following statements are true and correct:

A. I/we have completed a personal financial management instructional course provided through an agency approved by the United States Trustee and have filed a statement, prepared as prescribed by Official Form 23, regarding completion of said course. (In a joint case, both husband and wife must each complete the course and file an Official Form 23). 11 U.S.C. §1328(g)

B. All pre-petition amounts owed by me on a domestic support obligation, if any, have been paid to the extent provided by the plan. All post-petition amounts owed by me on a domestic support obligation, if any, have been paid. ("Domestic support obligation" is defined at 11 U.S.C. §101(14A)). 11 U.S.C. §1328(a)

C. I/we have not received a discharge under chapter 7, 11 or 12 of the Bankruptcy Code in a prior case filed during the four-year period preceding the date that the petition was filed in this case. 11 U.S.C. §1328(f)(1)

D. I/we have not received a discharge under chapter 13 of the Bankruptcy Code in a prior case filed during the two-year period before the date that the petition was filed in this case. 11 U.S.C. §1328(f)(2)

E. I/we have not been convicted of a felony, the circumstances of which would demonstrate that the filing of this bankruptcy case constituted an abuse of the provisions of the Bankruptcy Code. 11 U.S.C. §1328(h)(I) and §522(q)(I)(A)

F. If I/we owe a debt arising from: (i) any violation of any State of Federal securities laws, regulations or orders, (ii) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security, (iii) a civil remedy under §1964 of Title 18 of the United States Code, or (iv) that caused serious injury or death to another individual in the preceding five years, then I/we have not claimed an exemption for my/our residence in an amount in excess of the statutory cap as prohibited by §522(q)(1) of the Bankruptcy Code. 11 U.S.C. §1328(h)(1) and §522(q)(1)(B)

G. No proceeding is pending in which I/we may be found guilty of a felony of the kind described in §522(q)(I)(A) or in which I/we may be found liable for a debt of the kind described in §522 (q)(I)(B). 11 U.S.C. §1328(h)(2)

H. I/we have made all payments required by my confirmed Chapter 13 plan or have, by separate motion, moved for the entry of a hardship discharge pursuant to 11 U.S.C. §1328(b).

2. Debtor(s) hereby move the Court for the entry of a discharge order in this case.

Signed: ____________________________
Debtor's Signature Date

Signed: _____________________ _________
Spouse's Signature (in Joint Cases only) Date

Signed: _____________________ _________
Attorney for the Debtor(s) Date
State Bar No.
Address
Telephone Number

3. Mailing address for filing responses: David J. Puddister, Clerk
U.S. Bankruptcy Court
703 Highway 145 North
Aberdeen, MS 39730

CERTIFICATE OF SERVICE

On _____________________, a copy of this pleading was served on each of the persons listed on the attached service list either by prepaid United States mail or via electronic service through the Court's CM/ECF system at the mailing addresses and/or email addresses indicated.

____

Signature

STANDING ORDER REGARDING DISSEMINATION OF CHAPTER 13 PLAN TO INTERESTED PARTIES

Within seven (7) days after filing the plan in all Chapter 13 cases, the attorney for the debtor (or the debtor) shall serve a copy of the plan on all creditors, the trustee, the United States Trustee, and all other parties in interest. The attorney for the debtor (or the debtor) shall file a certificate of service with the court which includes a copy of the plan and a record of to whom it was sent.

This Standing Order shall apply to all cases pending on, and filed after, February 1, 2010.

SO ORDERED, this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

Editor's Note.— This Standing Order replaces former Local Rule No. S13-1 and requires the debtor's attorney to provide a copy of the proposed Chapter 13 plan to all creditors, the trustee and the United States Trustee.

STANDING ORDER REGARDING SUBMISSION OF ORDER OR JUDGEMENT AFTER HEARING

After hearings held in the bankruptcy court, the prevailing party shall submit an order or judgement, consistent with the court's ruling, within fourteen (14) days of the hearing, or such other time as the court may direct, for the bankruptcy court's approval and entry.

Except as otherwise directed by the court, prior to submitting the order or judgement to the court, the prevailing party shall submit the order to all parties appearing at the hearing for signature indicating approval as to form. Parties to whom the order or judgement has been submitted shall promptly sign it or promptly contact the party who drafted it to express any criticism.

The court may impose disciplinary sanctions against any attorney failing to abide by this rule.

SO ORDERED, this the 1st day of February, 2010.

DAVID W. HOUSTON, III
JUDGE, CHIEF UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

Editor's Note.— This Standing Order replaces and amends former Local Rule No. 17 by extending the deadline to submit an order or judgment after a hearing from 10 days to 14 days.

STANDING ORDER REGARDING PROCEDURE FOR MODIFICATION OF CHAPTER 13 PLAN

THIS Standing Order establishes the procedure for modifying a Chapter 13 plan and supplements Miss. Bankr. L. R. 3015-1.

Modification of Chapter 13 Plan Prior to Confirmation The debtor may file a modification of a Chapter 13 plan with the clerk of court at any time before the plan is confirmed in accordance with 11 U.S.C. § 1323(a). The attorney for the debtor (or the debtor) shall send a notice of such modification to the trustee, United States Trustee, and all creditors affected by the modification. The notice must include a statement that recipients have 21 days to object to the proposed modification by filing an objection with the court. The attorney for the debtor (or the debtor) shall file a certificate of service, including a copy of the modification and notice attached, indicating that the trustee, United States Trustee, and affected creditors were served with a copy of same. If an objection is timely filed, the court will schedule a hearing.

Modification of Chapter 13 Plan After Confirmation The moving party shall file a Motion and Notice to Modify Confirmed Plan. The moving party shall issue a notice, with the response date, to the trustee, the United States Trustee, and all creditors affected by the modification. The motion shall include a statement that recipients have 21 days to file an objection to the proposed motion. The moving party shall attach a certificate of service to the motion and notice, indicating that the trustee, United States Trustee, and affected creditors were served with a copy of same. If no objection is timely filed, the motion may be granted.

SO ORDERED, Effective April 1, 2015.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON
UNITED STATES BANKRUPTCY JUDGE

JASON D. WOODARD
UNITED STATES BANKRUPTCY JUDGE

Effective April 1, 2015; Amended effective June 1, 2018.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

STANDING ORDER PAYMENT OF ATTORNEY FEES IN CHAPTER 13 CASES

This order is applicable to all cases filed on and after August 1, 2014, pursuant to Chapter 13 of the Bankruptcy Code (11 U.S.C. 1301 et seq.).

Following confirmation of the plan, any fee to be paid to the attorney for the debtor, pursuant to the approved plan, shall be disbursed by the trustee as follows:

(1) The trustee shall make an initial payment of $100.00 plus additional payments equal to 15% of funds received by the trustee until the fee is paid.

(2) If any additional attorney fee is approved by the Court subsequent to confirmation of the plan, the amount of the additional fee will be amortized over the remaining months of the plan and the wage order adjusted as may be necessary.

SO ORDERED. Effective August 1, 2014.

Edward Ellington
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Neil P. Olack
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Katherine M. Samson
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Jason D. Woodard
JUDGE, UNITED STATES BANKRUPTCY JUDGE

AMENDED STANDING ORDER REGARDING USE OF "NO-LOOK" FEE IN AWARDING REASONABLE COMPENSATION AND REIMBURSABLE EXPENSES TO ATTORNEYS OF DEBTORS IN CHAPTER 13 CASES

If there is no objection raised by a party in interest, the attorney for the debtor in chapter 13 cases may comply with the requirements of 11 U.S.C. § 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure ("Rule 2016") by charging the debtor a presumptively reasonable fee (the "No-Look Fee") up to:

- $3,000 Cases filed from October 1, 2013, through July 31, 2014.
- $3,200 Cases filed on or after August 1, 2014.

An attorney who chooses to use the No-Look Fee may not seek or collect additional payment from the debtor without prior Court approval, except as expressly allowed in this Order.

The services encompassed by the No-Look Fee include the representation of the debtor during the pre-confirmation and post-confirmation stages of a chapter 13 case but do not include the representation of the debtor in any adversary proceeding. An attorney who represents a debtor in an adversary proceeding must submit an appropriate itemized application for compensation that complies with Rule 2016.

The No-Look Fee shall be deemed full compensation for all legal services rendered by the debtor's attorney, and all actual and necessary expenses incurred in connection with those services, except for the following expenses: (1) the statutory filing fee, 28 U.S.C. § 1930(a)(1)(B) and (b); (2) any charge incurred for a credit report from a credit reporting agency; and (3) the credit counseling fee, 11 U.S.C. § 109(h)(1). An attorney may seek reimbursement for any of these expenses from the debtor if the attorney actually incurred that expense in connection with the debtor's bankruptcy case and if the debtor actually agreed to reimburse the attorney for that expense.

The No-Look Fee may be adjusted by the Court if appropriate in the case. For example, if a contested matter arises that requires the expenditure of an extraordinary amount of time or that involves an expense of an unusual nature or amount, an attorney may request an enhancement of the No-Look Fee by filing an appropriate itemized application that complies with Rule 2016. Conversely, the Court may order a reduction of the No-Look Fee if warranted by the circumstances in the case.

This Order does not preclude an attorney from exercising the alternative option of forgoing the No-Look Fee and instead filing an application that establishes the attorney's entitlement to compensation under the lodestar method and reimbursement of expenses. In such event, the debtor's application must include contemporaneous hourly time records for all work performed in the case as required by Rule 2016.

This Order amends all previous standing orders regarding attorney's fees in chapter 13 cases.

SO ORDERED. Effective August 1, 2014.

Edward Ellington
JUDGE, UNITED STATES BANKRUPTCY COURT

Neil P. Olack
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Katherine M. Samson
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Jason D. Woodard
JUDGE, UNITED STATES BANKRUPTCY JUDGE

AMENDED STANDING ORDER ADOPTING PROCEDURES FOR OBTAINING DISCHARE IN COMPLETED CHAPTER 13 CASES

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") requires certain disclosures and certifications to be made by the debtor before a discharge may be entered in cases commenced on or after October 17, 2005. This Standing Order establishes the standards and procedure whereby the debtor may comply with the disclosure requirements and obtain a discharge in chapter 13 cases. The requirements of this Standing Order must be met in order to receive a discharge from and after May 1, 2009.

This Standing Order does not apply to cases commenced prior to October 17, 2005, nor does it apply in those cases where a discharge has been waived or denied.

1. Unless the debtor is not entitled to a discharge, the filing of the Notice of Completion of Plan Payments by the Chapter 13 Trustee will constitute notice that each debtor must file a Debtor's Certification and Motion for Entry of Chapter 13 Discharge Pursuant to 11 U.S.C. §1328(a) and (h), (the "Motion") (in substantially the same format as prescribed by the Clerk and made available on the Court's website). The Motion must be signed by the debtor(s) and the attorney of record and filed with the Court. A copy of the Motion must be served by the debtor(s) on all creditors and parties in interest included on the Court's mailing matrix within thirty (30) days of the filing date of the Chapter 13 Trustee's *Notice of Completion of Plan Payments.*

2. The Motion will include verifications by the debtor(s) regarding satisfaction of plan requirements, entitlement to a discharge, and the status of domestic support obligations ("Domestic Support Obligation" as defined at 11 U.S.C. §101(14A)). The Motion also will include verification that the debtor is not disqualified by the provisions of 11 U.S.C. §1328(h) from receiving a discharge.

3. If a response or objection to the Motion is not filed within twenty-one (21) days of the date of service as reflected on the Certificate of Service, and provided the debtor is otherwise entitled, the court will enter a discharge order. Entry of the discharge order constitutes a finding that 11 U.S.C. §1328(h) has been satisfied and that there is no reasonable cause to believe that the entry of discharge should be delayed. If a response or objection is filed to the Motion, the matter will be set for hearing.

4. If the Motion is not timely filed by the debtor(s), the case may be closed without the entry of discharge.

5. If the debtor(s) is/are unable to certify as to the truth and correctness of the assertions on the form Motion but believe(s) that a discharge is warranted nevertheless, debtor(s) should draft and file a motion for discharge explaining why the assertions in the form Motion can not be certified and further explaining why a discharge should be granted.

6. In the event the debtor(s) seek(s) a hardship discharge pursuant to 11 U.S.C. §§ 1328(b), the debtor's motion for hardship discharge shall include certification regarding the status of domestic support obligations (as defined at 11 U.S.C. § 101(14A)) and that the debtor(s) is/are not disqualified by the provisions of 11 U.S.C. § 1328(h) from receiving a discharge.

SO ORDERED. Effective: December 1, 2013.

Edward Ellington
UNITED STATES BANKRUPTCY JUDGE

Katharine M. Samson
UNITED STATES BANKRUPTCY JUDGE

Neil P. Olack
UNITED STATES BANKRUPTCY JUDGE

Brought forward and amended effective February 1, 2010; amended effective December 1, 2013.

DEBTOR'S CERTIFICATION AND MOTION FOR ENTRY OF CHAPTER 13 DISCHARGE PURSUANT TO 11 U.S.C. §1328 (a) and (h)

THIS MOTION SEEKS AN ORDER DISCHARGING THE DEBTOR(S) PURSUANT TO §1328(a) OF THE BANKRUPTCY CODE. IF YOU OPPOSE THIS MOTION, YOU MUST FILE A RESPONSE WITH THE COURT WITHIN TWENTY-ONE (21) DAYS FROM THE DATE LISTED BELOW IN THE CERTIFICATE OF SERVICE. YOUR RESPONSE MUST SET FORTH THE SPECIFIC FACTUAL ALLEGATIONS WITH WHICH YOU DISAGREE, AND A COPY OF YOUR RESPONSE MUST BE SERVED ON THE DEBTOR(S) AND DEBTOR'S(S') ATTORNEY. IF NO TIMELY RESPONSE IS FILED, THE COURT MAY GRANT THIS MOTION WITHOUT HOLDING A HEARING. A TIMELY RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

1. By signing below, the debtor(s) certify under penalty of perjury that the following statements are true and correct:

A. For cases filed on or after March 10, 2008, I/we have completed a personal financial management instructional course provided through an agency approved by the United States Trustee and have filed a statement, prepared as prescribed by Official Form 23, regarding completion of said course. (In a joint case, both husband and wife must each complete the course and file an Official Form 23.). 11 U.S.C. §1328(g)

B. All pre-petition amounts owed by me on a domestic support obligation ("Domestic Support Obligation" as defined at 11 U.S.C. § 101(14A), if any, have been paid to the extent provided by the plan. All post-petition amounts owed by me on a domestic support obligation, if any, have been paid. 11 U.S.C. §1328(a)

C. I/We have not received a discharge under chapter 7, 11 or 12 of the Bankruptcy Code in a prior case filed during the four-year period preceding the date that the petition was filed in this case. 11 U.S.C. §1328(f)(1)

D. I/We have not received a discharge under chapter 13 of the Bankruptcy Code in a prior case filed during the two-year period before the date that the petition was filed in this case. 11 U.S.C. §1328(f)(2)

E. I/we have not been convicted of a felony, the circumstances of which would demonstrate that the filing of this bankruptcy case constituted an abuse of the provisions of the Bankruptcy Code. 11 U.S.C. §1328(h)(1) and §522(q)(1)(A)

F. If/we owe a debt arising from: (i) any violation of any State or Federal securities laws, regulations or orders, (ii) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security, (iii) a civil remedy under §1964 of Title 18 of the United States Code, or (iv) that caused serious injury or death to another individual in the preceding five (5) years, then I/we have not claimed an exemption for my/our residence in an amount in excess of the statutory cap as prohibited by §522(q)(l) of the Bankruptcy Code. 11 U.S.C. §1328(h)(1) and §522(q)(1)(B)

G. No proceeding is pending in which I/we may be found guilty of a felony of the kind described in §522(q)(l)(A) or in which I/we may be found liable for a debt of the kind described in §522 (q)(l)(B). 11 U.S.C. §1328(h)(2)

H. I/We have made all payments required by my confirmed Chapter 13 plan.

2. Debtor(s) hereby move the Court for the entry of a discharge order in this case.

Signed: ______________________________ ____________
Debtor's Signature Date

______________________________ ____________
Spouse's Signature (in Joint Cases only) Date

______________________________ ____________
Attorney for the Debtor(s) Date
Bar No. ____________
Address
Telephone Number

3. Mailing address for filing responses: (change address as appropriate)

Jackson Office:
Danny L. Miller, Clerk
United States Bankruptcy Court
P.O. Box 2448
Jackson, Mississippi 392225-2448

Gulfport Divisional Office:
Danny L. Miller, Clerk,
United States Bankruptcy Court
Dan M. Russell, Jur. U.S. Courthouse
2012 15th Street, Suite 244
Gulfport Mississippi 39501

CERTIFICATE OF SERVICE

On ____________ , a copy of this pleading was served on each of the persons listed on the attached service list either by prepaid United States mail or via electronic service through the Court's CM/ECF system at the mailing addresses and/or email addresses indicated.

____
Signature

STANDING ORDER REGARDING VIDEO CONFERENCING IN PROCEEDINGS BEFORE JUDGE NEIL P. OLACK

Video conferencing capabilities are available for (a) the U. S. Bankruptcy Court for the Northern District of Mississippi at the U. S. Courthouse in Greenville, Mississippi, and (b) the U. S. Bankruptcy Court for the Southern District of Mississippi at the U. S. Bankruptcy Court in Jackson, Mississippi, and the Dan M. Russell, Jr. U. S. Courthouse in Gulfport, Mississippi. The Court finds that counsel and others who utilize such video conferencing shall abide by the procedures and directives set forth below in proceedings before Judge Neil P. Olack:

SCHEDULING:

(1) The Court may set for hearing by video conference any matter in a bankruptcy case, including contested matters or adversary proceedings. Generally, such hearings will be scheduled to avoid significant time and expense of travel for the Court and the participants. Video conferencing may be utilized for status conferences and pretrial conferences, and for other hearings and trials regarding the introduction of evidence and taking of testimony when the Court deems appropriate.

(2) Parties in interest may request that the Court set for hearing by video conference any matter in a bankruptcy case. The moving party must:

(a) obtain consent from other interested parties prior to contacting the Court; and,

(b) request permission for hearing by video conference from Judge Olack's courtroom deputy seven days prior to the proceeding.

(3) The Court, in its discretion, shall determine whether said request should be granted. Requests received by the Court outside the time parameters described above will not be considered except in emergency situations. The Court may grant any request for hearing by video conference with or without a written order.

(4) The Court shall provide notice of the place and time for all proceedings set for hearing by video conference.

(5) The Court may at any time vacate a previously granted request for hearing by video conference, and may order any party to appear personally in court for any proceeding.

DOCUMENTS:

(1) In any proceeding set for hearing by video conference, the parties shall exchange all witness and exhibit lists and copies of exhibits, if applicable, at least seven days before the proceeding. The parties also shall provide copies of same to the Court's Jackson chambers at least seven days before the proceeding in either paper or electronic form. If parties choose to email exhibits to chambers, they should email them to olack=hrzchambers@mssb.uscourts.gov. In marking the exhibits, the parties shall determine an identification sequence that eliminates any duplication. At the hearing, the original exhibits should be in the courtroom where the witness will testify.

(2) If any other written documents are to be considered or reviewed at any proceeding, the parties shall exchange and provide copies of such documents to the Court at least seven days prior to the proceeding.

(3) Failure to comply with this provision may result in sanctions, including the Court denying any undisclosed witness testimony and denying the admission of any unexchanged exhibits.

PROCEDURES:

(1) Decorum. The formalities of a courtroom shall be observed. When called, parties are to approach the video conference table and situate themselves so that they are able to view the video screen and be seen by the Court.

(2) Identification. All parties in attendance must identify themselves and state their interest in the proceeding.

(3) Witnesses. Any witness called will be sworn in for the video conference by the courtroom deputy or other authorized court personnel.

(4) Recording. The video conference constitutes a court proceeding, and any recording other than the official court version is prohibited. No party may record images or sounds from any location.

(5) Equipment Operation. The Court shall be responsible for operation of the video conferencing equipment.

(6) Contact Information. Questions concerning video conferencing should be directed to Judge Olack's courtroom deputy.

(7) Computation of Time. The computation of time as promulgated by Federal Rule of Bankruptcy Procedure 9006 shall apply to this Standing Order.

SO ORDERED, Effective: February 1, 2010.

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

SECOND AMENDED STANDING ORDER ADOPTING INTERIM BANKRUPTCY RULE 1007-1

Whereas, the National Guard and Reservists Debt Relief Act of 2008, Pub. L. No. 110-438, excludes certain members of the National Guard and Reserves from means testing in chapter 7 bankruptcy cases, which are commenced in the three-year period beginning December 19, 2008; and whereas the President signed the National Guard and Reservist Debt Relief Extension Act, Pub. L. No. 112-64, on December 13, 2011, extending the means test exclusion provisions until December 18, 2015; and

Whereas, the Advisory Committee on Bankruptcy Rules requested approval of Interim Bankruptcy Rule 1007-I; and

Whereas, the Executive Committee, acting on behalf of the Judicial Conference, has approved the transmission of Interim Bankruptcy Rule 1007-1 to the courts with a recommendation that it be adopted through a local rule or standing order; and

Whereas, Interim Bankruptcy Rule 1007-I was amended to implement changes in connection with the amendments to Rule 9006(a) effective December 1, 2009; and

Whereas, Interim Bankruptcy Rule 1007-I, was amended further to implement changes in connection with amendments to Rule 1007 effective December 1, 2010;

IT IS, THEREFORE, ORDERED that Interim Bankruptcy Rule 1007-I, as amended, is adopted by the judges of this Court and is applicable to chapter 7 cases filed on or after December 19, 2008. See Exhibit A.

SO ORDERED, this the 4th day of January, 2012.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK

UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON
UNITED STATES BANKRUPTCY JUDGE

Interim Rule 1007-I. [1] Lists, Schedules, Statements, and Other Documents; Time Limits; Expiration of Temporary Means Testing Exclusion

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(4) Unless either: (A) § 707(b)(2)(D)(I) applies, or (B) § 707(b)(2)(D)(ii) applies and the exclusion from means testing granted therein extends beyond the period specified by Rule 1017(e), an individual debtor in a chapter 7 case shall file a statement of current monthly income prepared as prescribed by the appropriate Official Form, and, if the current monthly income exceeds the median family income for the applicable state and household size, the information, including calculations, required by § 707(b), prepared as prescribed by the appropriate Official Form.

(c) TIME LIMITS. In a voluntary case, the schedules, statements, and other documents required by subdivision (b)(1), (4), (5), and (6) shall be filed with the petition or within 14 days thereafter, except as otherwise provided in subdivisions (d), (e), (f), (h) and (n) of this rule. In an involuntary case, the schedules, statements, and other documents required by subdivision (b)(1) shall be filed by the debtor within 14 days after the entry of the order for relief. In a voluntary case, the documents required by paragraphs (A), (C), and (D) of subdivision (b)(3) shall be filed with the petition. Unless the court orders otherwise, a debtor who has filed a statement under subdivision (b)(3)(B), shall file the documents required by subdivision (b)(3)(A) within 14 days of the order for relief. In a chapter 7 case, the debtor shall file the statement required by subdivision (b)(7) within 60 days after the first date set for the meeting of creditors under § 341 of the Code, and in a chapter 11 or 13 case no later than the date when the last payment was made by the debtor as required by the plan or the filing of a motion for a discharge under § 1141(d)(5)(B) or § 1328(b) of the Code. The court may, at any time and in its discretion, enlarge the time to file the statement required by subdivision (b)(7). The debtor shall file the statement required by subdivision (b)(8) no earlier than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of the Code. Lists, schedules, statements, and other documents filed prior to the conversion of a case to another chapter shall be deemed filed in the converted case unless the court directs otherwise. Except as provided in § 1116(3), any extension of time to file schedules, statements, and other documents required under this rule may be granted only on motion for cause shown and on notice to the United

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[1] Interim Rule 1007-I has been adopted by the bankruptcy courts to implement the National Guard and Reservists Debt Relief Act of 2008, Public Law No: 110-438, as amended by Public Law No. 116-53. The amended Act, which provides a temporary exclusion from the application of the means test for certain members of the National Guard and reserve components of the Armed Forces, applies to bankruptcy cases commenced in the 15-year period beginning December 19, 2008.

States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Notice of an extension shall be given to the United States trustee and to any committee, trustee, or other party as the court may direct.

(n) TIME LIMITS FOR, AND NOTICE TO, DEBTORS TEMPORARILY EXCLUDED FROM MEANS TESTING.

(1) An individual debtor who is temporarily excluded from means testing pursuant to § 707(b)(2)(D)(ii) of the Code shall file any statement and calculations required by subdivision (b)(4) no later than 14 days after the expiration of the temporary exclusion if the expiration occurs within the time specified by Rule 1017(e) for filing a motion pursuant to § 707(b)(2).

(2) If the temporary exclusion from means testing under § 707(b)(2)(D)(ii) terminates due to the circumstances specified in subdivision (n)(1), and if the debtor has not previously filed a statement and calculations required by subdivision (b)(4), the clerk shall promptly notify the debtor that the required statement and calculations must be filed within the time specified in subdivision (n)(1).

(Amended effective December 1, 2009; brought forward without change effective February 1, 2010; amended December 28, 2011, and applicable to Chapter 7 cases filed on or after December 19, 2011, through December 18, 2015; amended effective December 1, 2012, and applicable to Chapter 7 cases filed on or after December 19, 2008; amended effective December 19, 2019, and applicable to Chapter 7 cases filed on or after December 19, 2019, through December 18, 2023.)

STANDING ORDER ADOPTING INTERIM BANKRUPTCY RULES TO IMPLEMENT THE SMALL BUSINESS REORGANIZATION ACT OF 2019

On August 23, 2019, the Small Business Reorganization Act of 2019 (the SBRA) was enacted into law. The SBRA makes many substantive and procedural changes to the Bankruptcy Code and requires changes to the Federal Rules of Bankruptcy Procedure to implement those changes. However, the February 19, 2020 effective date of the SBRA occurs long before the Bankruptcy Rules can be amended under the three-year process required by the Rules Enabling Act. Accordingly, the Advisory Committee on Bankruptcy Rules (the Advisory Committee) drafted, published for comment, and subsequently approved interim bankruptcy rules (the Interim Rules) for distribution to the courts. The Committee on Rules of Practice and Procedure approved the Interim Rules, and the Judicial Conference authorized distribution of the Interim Rules to courts for adoption locally to facilitate uniform implementation of the changes mandated by the SBRA.

NOW THEREFORE, pursuant to 28 U.S.C. § 2071, Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached Interim Rules are adopted in their entirety without change by the Bankruptcy Judges of the Northern and Southern Districts of Mississippi to be effective February 19, 2020. For cases and proceedings not governed by the SBRA, the Federal Rules of Bankruptcy Procedure and the

Uniform Local Banlauptcy Rules for the Northern and Southern Districts of Mississippi shall apply.

SO ORDERED. Effective February 19, 2020.

SELENE D. MADDOX
JUDGE, UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON
JUDGE, UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
JUDGE, UNITED STATES BANKRUPTCY JUDGE

JASON D. WOODARD
JUDGE, UNITED STATES BANKRUPTCY JUDGE

INTERIM AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE [1]

Rule 1007. Lists, Schedules, Statements, and Other Documents; Time Limits

(b) SCHEDULES, STATEMENTS, AND OTHER DOCUMENTS REQUIRED.

(5) An individual debtor in a chapter 11 case (unless under subchapter V) shall file a statement of current monthly income, prepared as prescribed by the appropriate Official Form.

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. If, as provided by § 541(a)(5) of the Code, the debtor acquires or becomes entitled to acquire any interest in property, the debtor shall within 14 days after the information comes to the debtor's knowledge or within such further time the court may allow, file a supplemental 18 schedule in the chapter 7 liquidation case, chapter 11 reorganization case, chapter 12 family farmer's debt adjustment case, or chapter 13 individual debt adjustment case. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. This duty to file a supplemental schedule continues even after the case is closed, except for property acquired after an order is entered:

(1) confirming a chapter 11 plan (other than one confirmed under§ 1191(b)); or

(2) discharging the debtor in a chapter 12 case, a chapter 13 case, or a case under subchapter V of chapter 11 in which the plan is confirmed under § 1191(b). (Amended effective February 19, 2020)

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[1] These interim bankruptcy rules (the Interim Rules) have been prepared by the Advisory Committee on Bankruptcy Rules and approved by the Judicial Conference of the United States to be adopted as local rules by the Bankruptcy Courts to implement the procedural and substantive changes to the Bankruptcy Code made by the Small Business Reorganization Act of 2019. The Interim Rules will be withdrawn after similar amendments can made to the Rules of Bankruptcy Procedure under the nonnal Rules Enabling Act process.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates under Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11 of the Code.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration under Rule 1015(b), the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code, unless the case is under subchapter V of chapter 7 or subchapter V of chapter 11.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(2) *Chapter 11 Reorganization Cases.* If the appointment of a trustee is ordered or is required by the Code, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases. (Amended effective February 19, 2020)

Rule 2012. Substitution of Trustee or Successor Trustee; Accounting

(a) TRUSTEE. If a trustee is appointed in a chapter 11 case (other than under subchapter V), or the debtor is removed as debtor in possession in a chapter 12 case or in a case under subchapter V of chapter 11, the trustee is substituted automatically for the debtor in possession as a party in any pending action, proceeding, or matter. (Amended effective February 19, 2020)

Rule 2015. Duty to Keep Records, Make Reports, and Give Notice of Case or Change of Status

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall:

(1) in a chapter 7 liquidation case and, if the court directs, in a chapter 11 reorganization case (other than under subchapter V), file and transmit to the United States trustee a complete inventory of the property of the debtor within 30 days after qualifying as a trustee or debtor in possession, unless such an inventory has already been filed;

(2) keep a record of receipts and the disposition of money and property received;

(3) file the reports and summaries required by § 704(a)(8) of the Code, which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited;

(4) as soon as possible after the commencement of the case, give notice of the case to every entity known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case;

(5) in a chapter 11 reorganization case (other than under subchapter V), on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. § 1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. § 1930(a)(6) for that quarter; and

(6) in a chapter 11 small business case, unless the court, for cause, sets another reporting interval, file and transmit to the United States trustee for each calendar month after the order for relief, on the appropriate Official Form, the report required by § 308. If the order for relief is within the first 15 days of a calendar month, a report shall be filed for the portion of the month that follows the order for relief. If the order for relief is after the 15th day of a calendar month, the period for the remainder of the month shall be included in the report for the next calendar month. Each report shall be filed no later than 21 days after the last day of the calendar month following the month covered by the report. The obligation to file reports under this subparagraph terminates on the effective date of the plan, or conversion or dismissal of the case.

(b) TRUSTEE, DEBTOR IN POSSESSION, AND DEBTOR IN A CASE UNDER SUBCHAPTER V OF CHAPTER 11. In a case under subchapter V of chapter 11, the debtor in possession shall perform the duties prescribed in (a)(2)-(4) and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the debtor's property within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (b). The debtor shall perform the duties prescribed in (a)(6).

(c) CHAPTER 12 TRUSTEE AND DEBTOR IN POSSESSION. In a chapter 12 family farmer's debt adjustment case, the debtor in possession shall perform the duties prescribed in clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the time fixed by the court. If the debtor is removed as debtor in possession, the trustee shall perform the duties of the debtor in possession prescribed in this subdivision (c).

(d) CHAPTER 13 TRUSTEE AND DEBTOR.

(1) *Business Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (2)-(4) of subdivision (a) of this rule and, if the court directs, shall file and transmit to the United States trustee a complete inventory of the property of the debtor within the 87 time fixed by the court.

(2) *Nonbusiness Cases.* In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(e) FOREIGN REPRESENTATIVE. In a case in which the court has granted recognition of a foreign proceeding under chapter 15, the foreign representative shall file any notice required under § 1518 of the Code within 14 days after the date when the representative becomes aware of the subsequent information.

(f) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports. A copy of every report or summary mailed or published pursuant to this subdivision shall be transmitted to the United States trustee. (Amended effective February 19, 2020)

Rule 3010. Small Dividends and Payments in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13

(b) CASES UNDER SUBCHAPTER V OF CHAPTER 11, CHAPTER 12, AND CHAPTER 13. In a case under subchapter V of chapter 11, chapter 12, or chapter 13, no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment. (Amended effective February 19, 2020)

Rule 3011. Unclaimed Funds in Cases Under Chapter 7, Subchapter V of Chapter 11, Chapter 12, and Chapter 13

The trustee shall file a list of all known names and addresses of the entities and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code. (Amended effective February 19, 2020)

Rule 3014. Election Under § 1111(b) by Secured Creditor in Chapter 9 Municipality or Chapter 11 Reorganization Case

An election of application of § 1111(b)(2) of the 5 Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. If the disclosure statement is conditionally approved pursuant to Rule 3017.1, and a final hearing on the disclosure statement is not held, the election of application of § 1111(b)(2) may be made not later than the date fixed pursuant to Rule 3017.1(a)(2) or another date the court may fix. In a case under subchapter V of chapter 11 in which § 1125 of the Code does not apply, the election may be made not later than a date the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan. (Amended effective February 19, 2020)

Rule 3016. Filing of Plan and Disclosure Statement in a Chapter 9 Municipality or Chapter 11 Reorganization Case

(a) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it.

(b) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement, if required under § 1125 of the Code, or evidence showing compliance with § l 126(b) shall be filed with the plan or within a time fixed by the court, unless the plan is intended to provide adequate information under § 1125(f)(1). If the plan is intended to provide adequate information under§ 1125(f)(1), it shall be so designated, and Rule 3017.1 shall apply as if the plan is a disclosure statement.

(d) STANDARD FORM SMALL BUSINESS 19 DISCLOSURE STATEMENT AND PLAN. In a small business case or a case under subchapter V of chapter 11, the court may approve a disclosure statement and may confirm a plan that conform substantially to the appropriate Official Forms or other standard forms approved by the court. (Amended effective February 19, 2020)

Rule 3017.1 Court Consideration of Disclosure Statement in a Small Business Case or in a Case Under Subchapter V of Chapter 11

(a) CONDITIONAL APPROVAL OF DISCLOSURE STATEMENT. In a small business case or in a case under subchapter V of chapter 11 in which the court has ordered that § 1125 applies, the court may, on application of the plan proponent or on its own initiative, conditionally approve a disclosure statement filed in accordance with Rule 3016. On or before conditional approval of the disclosure statement, the court shall:

(1) fix a time within which the holders of claims and interests may accept or reject the plan;

(2) fix a time for filing objections to the disclosure statement;

(3) fix a date for the hearing on final approval of the disclosure statement to be held if a timely objection is filed; and

(4) fix a date for the heating on confirmation. (Amended effective February 19, 2020)

Rule 3017.2 Fixing of Dates by the Court in Subchapter V Cases in Which There Is No Disclosure Statement

In a case under subchapter V of chapter 11 in which § 1125 does not apply, the court shall:

(a) fix a time within which the holders of claims and interests may accept or reject the plan;

(b) fix a date on which an equity secuiity holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan;

(c) fix a date for the hearing on confirmation; and

(d) fix a date for transmission of the plan, notice of the time within which the holders of claims and interests may accept or reject the plan, and notice of the date for the hearing on confirmation. (Amended effective February 19, 2020)

Rule 3018. Acceptance or Rejection of Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(a) ENTITIES ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected in accordance with § 1126 of the Code within the time fixed by the court pursuant to Rule 3017, 3017.1, or 3017.2. Subject to subdivision (b) of this rule, an equity security holder or creditor whose claim is based on a security of record shall not be entitled to accept or reject a plan unless the equity security holder or creditor is the holder of record of the security on the date the order approving the disclosure statement is entered or on another date fixed by the court under Rule 3017.2, or fixed for cause after notice and a hearing. For cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan. (Amended effective February 19, 2020)

Rule 3019. Modification of Accepted Plan in a Chapter 9 Municipality or a Chapter 11 Reorganization Case

(b) MODIFICATION OF PLAN AFTER CONFIRMATION IN INDIVIDUAL DEBTOR CASE. If the debtor is an individual, a request to modify the plan under § 1127(e) of the Code is governed by Rule 9014. The request shall identify the proponent and shall be filed together with the proposed modification. The clerk, or some other person as the court may direct, shall give the debtor, the trustee, and all creditors not less than 21 days' notice by mail of the time fixed to file objections and, if an objection is filed, the hearing to consider the proposed modification, unless the court orders otherwise with respect to creditors who are not affected by the proposed modification. A copy of the notice shall be transmitted to the United States trustee, together with a copy of the proposed modification. Any objection to the proposed modification shall be filed and served on the debtor, the proponent of the modification, the trustee, and any other entity designated by the court, and shall be transmitted to the United States trustee.

(c) MODIFICATION OF PLAN AFTER CONFIRMATION IN A SUBCHAPTER V CASE. In a case under subchapter V of chapter 11, a request to modify the plan under § 1193(b) or (c) of the Code is governed by Rule 9014, and the provisions of this Rule 3019(b) apply.

(Amended effective February 19, 2020.)

STANDING ORDER ADOPTING AMENDMENTS TO INTERIM BANKRUPTCY RULE 1020 TO IMPLEMENT THE CARES ACT

Effective February 19, 2020, by Standing Order, the Bankruptcy Judges of the Northern and Southern Districts of Mississippi adopted Interim Bankruptcy Rules (including Interim Bankruptcy Rule I 020) approved by the Committee on Rules of Practice and Procedure to facilitate uniform implementation of the changes mandated by the Small Business Reorganization Act of 2019.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was signed into law. Section I I 13 of the CARES Act made several temporary changes to the Bankruptcy Code to provide financial assistance during the COVID-19 pandemic. These changes necessitate corresponding amendments to Interim Bankruptcy Rule 1020. The Committee on Rules of Practice and Procedure approved the amendments to Interim Rule

1020, and the Judicial Conference authorized distribution to courts for adoption locally to facilitate implementation of the changes mandated by the CARES Act.

NOW THEREFORE, pursuant to 28 U.S.C. § 2071 , Rule 83 of the Federal Rules of Civil Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the attached amendments to Interim Rule I 020 are hereby adopted in their entirety without change by the Bankruptcy Judges of the Northern and Southern Districts of Mississippi effective March 27, 2020. These amendments to the Interim Rule 1020 shall remain in effect until March 26, 2021.

SO ORDERED. Effective March 27, 2020.

SELENE D. MADDOX
JUDGE, UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON
JUDGE, UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
JUDGE, UNITED STATES BANKRUPTCY JUDGE

JASON D. WOODARD
JUDGE, UNITED STATES BANKRUPTCY JUDGE

Rule 1020. Chapter 11 Reorganization Case for Small Business Debtors or Debtors Under Subchapter V

(a) DEBTOR DESIGNATION. In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor or a debtor as defined in § 1182(1) of the Code and, if the latter, whether the debtor elects to have subchapter V of chapter 11 apply. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor or a debtor as defined in § 1182(1) of the Code and, if the latter, whether the debtor elects to have subchapter V of chapter 11 apply. The status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) OBJECTING TO DESIGNATION. The United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

(c) PROCEDURE FOR OBJECTION OR DETERMINATION. Any objection or request for a determination under this rule shall be governed by Rule 9014 and served on: the debtor; the debtor's attorney; the United States trustee; the trustee; the creditors included on the list filed under Rule 1007(d) or, if a committee has been appointed under § 1102(a)(3), the committee or its authorized agent and any other entity as the court directs. (Amended effective March 27, 2020.)

Committee Note

The interim rule is amended in response to the enactment of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), Pub. L. No. 116-136, 134 Stat. 281. That law provides a new definition of "debtor" for determining eligibility to proceed under subchapter V of chapter 11. Subdivision (a) of the rule is amended to reflect that change. This amendment to the Code will terminate one year after the date of enactment of the CARES Act.

STANDING ORDER REGARDING FILING OF PAYMENT ADVICES PURSUANT TO 11 U.S.C. §521(a)(1)(B)(iv) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 1007(b)

IT IS HEREBY ORDERED effective as to cases filed on or after January 1, 2009, that copies of all payment advices or other evidence of payment, addressed in §521(a)(1)(B)(iv) of the Bankruptcy Code and F.R.B.P. 1007(b), received within sixty (60) days before the date of the filing of the petition by the debtor from any employer of the debtor (1) shall not be filed with the Court, and (2) shall instead by provided to the case trustee at least seven (7) days prior to the first date set for the meeting of creditors pursuant to 11 U.S.C. §341(a), but not later than forty-five (45) days after the date of the filing of the petition. At the time the payment advices or other evidence of payment are provided to the aforesaid trustee, the debtor shall file a certificate with the Clerk of this Court evidencing compliance with this Standing Order.

If the case trustee certifies to the Court that the payment advices or other evidence of payment were not provided within the aforesaid forty-five (45) day period, or any additional period allowed pursuant to §521(i)(3), the case may be dismissed by the Court without further notice by separate order.

Copies of the aforesaid payment advices or other evidence of payment shall be provided by the debtor to the U.S. Trustee during the pendency of a case within fourteen (14) days of a written request being filed by the U.S. Trustee with the Clerk of the Court. At the time the payment advices or other evidence of payment are provided to the U.S. Trustee, the debtor shall file a certificate with the Clerk of this Court evidencing compliance with this Standing Order.

If the U.S. Trustee certifies to the Court that the requested payment advices or other evidence of payment were not provided within the aforesaid fourteen (14) day period, the case shall be set for hearing to show cause why sanctions or other relief should not be granted by the Court.

Copies of the aforesaid payment advices or other evidence of payment shall also be provided by the debtor to any creditor who timely requests said copies. For the creditor's request to be considered timely, it must be received by the debtor's counsel or the pro se debtor at least seven (7) days before the first date set for the meeting of creditors. The said documents shall be timely furnished in the same manner as they would be provided to the case trustee within the limits set forth above.

A debtor with unavailable payment advices may in the alternative provide to the case trustee, the U.S. Trustee, or a party in interest a certification setting forth the reasons that the required information is unavailable, stating the debtor's estimate of income, and providing other evidence, if any, of payments received within the sixty (60) day time period.

To facilitate the provisions of this Standing Order, the debtor and/or attorney for the debtor shall retain possession of the payment advices or other evidence of payment during the time that the case is pending.

SO ORDERED. Effective: February 1,2010.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

STANDING ORDER ADOPTING COURT REGISTRY INVESTMENT SYSTEM

1.0 RECEIPT OF FUNDS

1.1 No money shall be deposited into the court's registry without a court order by a Judge of this Court,

1.2 All money ordered to be paid into the court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this court pursuant to 28 U.S.C. 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

1.3 The party making the deposit or transferring funds to the court's registry shall serve the order permitting the deposit or transfer on the clerk of court.

2.0 INVESTMENT OF REGISTRY FUNDS

2.1 Funds on deposit with the court are to be placed in an interest-bearing form. The Court Registry Investment System administered through the United States District Court for the Southern District of Texas shall be an acceptance investment mechanism.

2.2 Under Court Registry Investment System (C.R.I.S.) monies deposited in each case under 1.2 will be "pooled" together with those on deposit with the treasury to the credit of other courts in the Court Registry Investment System and used to purchase Treasury Securities which will be held at the Federal Reserve Bank of Dallas, in a safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the Court Registry Investment System.

2.3 An account for each case will be established in the C.R.I.S. titled in the name of the case giving rise to the investment in the system. Income received from fund investments will be distributed to each case based on the ratio each account's principal and income has to the aggregate principal and income total in the fund each week. Weekly reports showing the income earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in C.R.I.S. and made available to litigants and/or their counsels.

3.0 REGISTRY INVESTMENT FEE

3.1 The custodian is authorized and directed by this order to deduct from the income earned on the investment a fee not exceeding that authorized by the Judicial Conference of the United States as set by the Director of the Administrative Office of the U.S. Courts.

Funds first deposited into the Registry of the Court on and after December 1, 1990, there will be charged a fee of ten percent of the income earned while the funds are held in the Registry of the Court. The fee will be deducted at the time the funds are disbursed from the Registry of the Court or as may be otherwise ordered.

3.2 No additional fee shall be assessed with respect to investments for which a fee has already been deducted prior to the establishment of C.R.I.S. in this district

SO ORDERED. Effective: February 1, 2010

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

SUA SPONTE ORDER EXEMPTING CASE TRUSTEES FROM PUBLIC ACCESS ELECTRONIC USAGE FEE

WHEREAS, by memorandum dated October 19, 1992, and July 1, 1993, the Director of the Administrative office of the United States Courts provided guidelines for the implementation of certain exemptions authorized by the Judicial Conference of the United States to the nationwide miscellaneous fee for usage of access to court data; and

WHEREAS, the Director's memorandum dated July I, 1993, provided as one example of an appropriate ☐ ["]class of person" for whom the Court by order may provide exemption from payment of usage of electronic access to court data to ☐ ["] case trustees"; and

WHEREAS, established policies of the United States Courts are designed to encourage utilization of electronic access systems extensively; and

WHEREAS, extensive utilization of this court's Public Access System by case trustees would create for such trustees unreasonable financial burdens; but

WHEREAS, any exemptions granted to case trustees appointed in cases pending in this court should not extend to other legal work performed by any of said case trustees in their roles as attorneys as distinguished from work as case trustees; it is

ORDERED, on sua sponte motion of this Court, the following individuals:

Eileen Shaffer, Chapter 7 Trustee
J. Stephen Smith, Chapter 7 Trustee
James L. Henley, Jr., Chapter 13 Trustee
J.C. Bell, Chapter 13 Trustee
Derek A. Henderson, Chapter 7 Trustee
Harold J. Barkley, Jr., Chapters 12 & 13 Trustee
Kimberly R. Lentz, Chapter 7 Trustee
Warren A. Cuntz, Chapter 13 Trustee

who are regularly appointed by the United States Trustee to serve as case trustees, are hereby granted an exemption from payment of the electronic access usage fees for access to this court's Public Access System; provided, however, such exemptions shall not extend to the Public Access System access utilized by any such case trustee while performing services as an attorney, whether such services be performed for the case trustee or any other client.

SO ORDERED. Effective February 1,2010.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

STANDING ORDER EMPLOYMENT OF COUNSEL FOR THE DEBTOR-IN-POSSESSION

Whereas, Fed. R. Bankr, P. Rule 2014 sets forth requirements for an application for employment of professional persons; and,

Whereas, the court desires consistency in the form of order approving employment of counsel for the debtor-in-possession;

IT IS THEREFORE ORDERED that proposed orders authorizing employment of counsel for the debtor-in-possession conform substantially to the form appended as an attachment to this standing order.

SO ORDERED. Effective February 1,2010.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

IN RE:

CASE NO.
CHAPTER 11

ORDER AUTHORIZING DEBTOR-IN-POSSESSION TO EMPLOY COUNSEL

THIS CAUSE having come on for consideration of the Application of the Debtor-in-Possession to employ counsel, and the Court, having considered said application and otherwise being fully advised, is of the opinion that the application is well taken and should be approved.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the employment of ____________________, as counsel for ____________________, Debtor-in-Possession, be and it is hereby approved.

IT IS FURTHER ORDERED AND ADJUDGED that said counsel shall, within fourteen days of the entry hereof, file with the Court the statement of compensation required by 11 U.S.C. § 329 and Rule 2016(b), Federal Rules of Bankruptcy Procedure, if the said reports have not been filed.

IT IS FURTHER ORDERED AND ADJUDGED that said counsel shall be entitled to receive reasonable compensation and to receive reimbursement of actual, necessary expenses only after notice and a hearing as contemplated by 11 U.S.C. § 330, Rule 2016, Federal Rules of Bankruptcy Procedure, and any other applicable or related statutes and rules.

IT IS FURTHER ORDERED AND ADJUDGED that this order applies to any funds that might have been received by said counsel as a retainer or of a similar nature.

IT IS FURTHER ORDERED AND ADJUDGED that any application for compensation and reimbursement for expenses shall set forth the date of entry of all previous orders allowing compensation and expenses and the amounts so allowed.

SO ORDERED.

STANDING ORDER REQUIRING CERTIFICATE OF SERVICE

This order is applicable to all cases filed in the U. S. Bankruptcy Court for the Southern District of Mississippi:

WHEREAS, it is the policy of the Judicial Conference of the United States to require that, "an individual or entity providing notice should file a certificate of service that includes a record of what was sent and to whom."

It is hereby ordered that a *Certificate of Service* must include information indicating how service was accomplished on any party or counsel, and what method of service was utilized.

SO ORDERED. Effective: February 1, 2010

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

Effective February 1, 2010.

STANDING ORDER AUTHORIZING CHAPTER 7 TRUSTEE TO PAY BANK SERVICE CHARGES AND FEES INCURRED BY CHAPTER 7 ESTATE ACCOUNTS

It has come to the Court's attention that banks are no longer willing to waive fees for the maintenance of Chapter 7 estate accounts. As a result, Chapter 7 panel trustees will need authority to incur and pay bank. fees and charges directly related to the administration of estate accounts. Accordingly, in consideration of the foregoing, the Court orders that:

(1) Panel trustees administering cases under Chapter 7 of the Bankruptcy Code in the Southern District of Mississippi are authorized to incur and pay any actual, necessary expense as contemplated by 11 U.S.C. § 330, for bank fees and charges directly related to the administration of estate accounts; and

(2) The Court shall retain authority to review and approve such expenses during the administration of the case.

This Standing Order is effective for all Chapter 7 cases pending on or after October 1, 2011, and it shall remain in effect until further order of the Court.

SO ORDERED, this the 8th day September, 2011.

KATHARINE M. SAMSON
UNITED STATES BANKRUPTCY JUDGE

NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE

Standing Orders.

UNITED STATES BANKRUPTCY COURTS FOR THE NORTHERN AND SOUTHERN DISTRICTS OF MISSISSIPPI

STANDING ORDER REGARDING: (A) DISABILITY, IMPAIRMENT, DISBARMENT, OR SUSPENSION OF DEBTOR'S COUNSEL OR (B) DEATH OF DEBTOR'S COUNSEL

The U.S. Bankruptcy Judges of the Northern and Southern Districts of Mississippi have determined that it is necessary and appropriate to establish certain procedures to ensure that the interests of the debtor are protected in a bankruptcy case upon the disability, impairment, disbarment, or suspension (the "incapacity") of the debtor's attorney or upon the death of the debtor's attorney.

A. *Incapacity of Debtor's Attorney.* Once the Court becomes aware of the possible incapacity of a debtor's attorney, the Court may issue an order to show cause (the "Show-Cause Order") to that attorney. The Show-Cause Order will set a date, time, and place for a hearing (the "Show-Cause Hearing") so that the Court may ascertain what steps are necessary to ensure that the debtor continues to be represented in a manner consistent with applicable rules of professional conduct. *See, e.g.*, MISS. RULES OF PROF'L CONDUCT 1.1 (Competence); 1.3 (Diligence); 1.16 (Declining or Terminating Representation). The appearance of the debtor's attorney at the Show-Cause Hearing will be in his or her individual capacity only and not in a representative capacity as counsel for the debtor. The debtor's attorney, or any counsel representing the debtor's attorney, will be afforded twenty-one (21) days to file a written response to the Show-Cause Order. The Show-Cause Order will be similar to "Form A" attached to this Standing Order. Notice of the Show-Cause Order will be sent to: (1) the debtor, (2) the U.S. Trustee, (3) the case trustee, and (4) any entity that has made a notice of appearance or a formal request for notices in the case.

In a chapter 13 case, if the Court concludes that the attorney of a debtor has become incapacitated, the Court may instruct the case trustee to stop payment of fees to that attorney in all chapter 13 bankruptcy cases filed in this judicial district in which that attorney is the attorney of record for the debtor. The trustee shall hold any amounts for payment of attorney's fees and shall send a letter to the attorney stating that the disposition of such fees will be handled pursuant to the resolution of the Show-Cause Order under the procedures set forth in this Standing Order.

B. *Death of Debtor's Attorney.* Once the Court becomes aware of the possible death of a debtor's attorney, the Court may issue a Show-Cause Order to a partner or supervising lawyer in the law firm in which the debtor's attorney last practiced or to the personal representative of the attorney, if known. The Show-Cause Order will set a date, time, and place for a hearing so that the Court may ascertain what steps are necessary to ensure that the debtor continues to be represented in a manner consistent with applicable rules of professional conduct. See, e.g., MISS. RULES OF PROF'L CONDUCT 1.1 (Competence); 1.3 (Diligence); 1.16 (Declining or Terminating Representation). The appearance of an attorney at the Show-Cause Hearing will not be in a representative capacity as counsel for the Debtor. Any counsel representing the Debtor's attorney will be afforded twenty-one (21) days to file a written response to the Show-Cause Order. The Show-Cause Order will be similar to "Form B" attached to this Standing Order. Notice of the Show-Cause Order will be sent to: (1) the debtor's attorney at his or her last known address, (2) the debtor, (3) the U.S. Trustee, (4) the case trustee, and (5) any entity that has made a notice of appearance or a formal request for notices in the case.

SO ORDERED, Effective September 22, 2014.

EDWARD ELLINGTON
UNITED STATES BANKRUPTCY JUDGE
NEIL P. OLACK
UNITED STATES BANKRUPTCY JUDGE

KATHARINE M. SAMSON
UNITED STATES BANKRUPTCY JUDGE

JASON D. WOODARD
UNITED STATES BANKRUPTCY JUDGE

(Form A)

UNITED STATES BANKRUPTCY COURT
___________________ DISTRICT OF MISSISSIPPI

IN RE:
___________________,

DEBTOR.

CASE NO.
____ - ________ - ____

CHAPTER
__

ORDER TO SHOW CAUSE

Name of Debtor's Attomey
Address
___________________ , MS

You are hereby ordered to appear on ____ ,2014, at ________ ____ .m. in the Bankruptcy Courtroom, ____________________, ________, Mississippi (the "Show-Cause Hearing"), to show cause why the Court should not relieve you as the attorney of record for the debtor, ________________ (the "Debtor"), [and why the court should not instruct the chapter 13 trustee to stop payment of fees to you] in the above-referenced bankruptcy case (the "Case"). The issues that will be addressed at the Show Cause Hearing are whether *vel non* :

1. You have provided competent representation to the Debtor. *See* MISS. RULES OF PROF'L CONDUCT 1.1;
2. You have acted with reasonable diligence and promptness in representing the Debtor. *See* MISS. RULES OF PROF'L CONDUCT 1.3; and
3. Your physical or mental condition has materially impaired your ability to represent the Debtor. *See* MISS. RULES OF PROF'L CONDUCT 1.16.

Your appearance at the Show-Cause Hearing will be in your individual, not representative, capacity.

In addition to imposing relief in this Case, the Court may order the same relief in other bankruptcy cases filed in this judicial district where you are identified as the attorney of record for a debtor. You may file a written response within twenty-one (21) days of this Order to Show Cause. By copy of the Order to Show Cause, notice of the Show-Cause Hearing hereby is given to: (1) the debtor, (2) the U.S. Trustee, (3) the case trustee, and (4) any entity that has made a notice of appearance or a formal request for notices in the Case.

(Form B)

UNITED STATES BANKRUPTCY COURT
___________________ DISTRICT OF MISSISSIPPI

IN RE:

______________________,

DEBTOR.

CASE NO.
____ - ________ - ____

CHAPTER
__

ORDER TO SHOW CAUSE

Name of Partner of Debtor's Attorney or Supervising Lawyer of Debtor's Attorney
Law Firm
Address
______________________ , MS
or
Personal Representative of Debtor's Attorney
Address
______________________ , MS

You are hereby ordered to appear on ____ ,2014, at _________ _____ .m. in the Bankruptcy Courtroom, ______________________, _________, Mississippi (the "Show-Cause Hearing"), to show cause why the Court should not relieve ______________________ , (the "Debtor's Attorney") as the attorney of record for the debtor, _____________ (the "Debtor"), [and why the Court should not instruct the chapter 13 trustee to stop payment of fees to the Debtor's Attorney and your firm] in the above-referenced bankruptcy case (the "Case"). The issue that will be addressed at the Show-Cause Hearing is whether the Debtor continues to be represented competently and diligently in the Case in light of the possible death of the Debtor's attorney. See MISS. RULES OF PROF'L CONDUCT 1.1; 1.3; & 1.16. Your appearance at the Show Cause Hearing will not be in any representative capacity on the Debtor's behalf.

In addition to imposing relief in this Case, the Court may order the same relief in other bankruptcy cases filed in this judicial district where the Debtor's Attorney is identified as the attorney of record for a debtor. You may file a written response within twenty-one (21) days of this Order to Show Cause. By copy of the Order to Show Cause, notice of the Show-Cause Hearing is given to: (1) the Debtor's Attorney at his or her last known address, (2) the Debtor, (3) the U.S. Trustee, (4) the case trustee, (5) and any entity that has made a notice of appearance or a formal request for notices in the Case.

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MISS. BANKR L.R.
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